MONTANA LEGISLATIVE HISTORY

Chapter 268 ~~19~~ 2001

Bill H 473 S _____ Original bill & history ___C

H. Committee on Natural Res.			S. Committee on Natural Res.		
Hearing Date(s)	2-12	✓C	Hearing Date(s)	3-12	✓C
	2-16	✓C		3-16	✓C
	_____	___C		_____	___C
Free Conf	4-6	✓C		_____	___C
Date Out	4-11	✓C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HEARING ON HB 473

Sponsor: Representative Cindy Younkin, HD 28

Proponents: Ted Hoffman, H & F Logging Inc.
Cary Hegreberg, Montana Wood Products Association
Ed Regan, RY Timber Corporation
Tim Ryan Larex
Rita Windom, Lincoln County Commissioners
Dave Skinner
Don Serba, Pulp and Paper Workers Resource Council
Kim Lyles, PPWRC
Gail Abercrombie, Montana Petroleum Association
Donna Thorton, logging contractor
Ed Eggleston
John Bloomquist, Montana Stock Growers Association, Montana Water Resource Association
John Youngberg, Montana Farm Bureau
Roger Halver, Montana Association of Realtors
Frank Crowley, Asarco
Steve Flynn, Louisiana Pacific
Patrick Heffernan, Montana Logging Association
Don Allen, Western Environmental Trade Association
Mike Collins, Independent Montana Miners

Opponents: John Wilson, Montana Trout Unlimited
Bob Stevens
Tracy Stone-Manning
Hal Harper
Jim Jensen, Montana Environmental Information Center
Janet Ellis, Montana Audubon
Paul Hawks, NPRC, Cottonwood Resource Council
Toby Day
Paul Edwards
Sherm Jenki
Steve Kelley, Friends of the Wild Swan
David Dittloff, Montana Wildlife Federation
Stan Frasier, Montana Conservation Voters
Joe Gutkoski, Montana River Action
George Ochenski, Confederated Salish and Kootenai Tribes
Hope Stevens

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 30.6}

REPRESENTATIVE CINDY YOUNKIN, HD 28, said that this bill will clarify that MEPA is a procedural act and not a substantive act. It comes down to the question of whether MEPA should dictate a result or a process. This is not a technical bill and it doesn't have a hidden agenda. It is just a matter of policy as to what this legislative body will make. We are the policy makers in government, not the agencies. MEPA was enacted in 1971 as a look-before-you-leap act. It was patterned after the national environmental policy act, which the United States Supreme Court has determined is a procedural statute. MEPA requires that we need to determine the environmental impact before it happens. Nowhere in the pages of MEPA does it say, "Thou shalt not pollute." It says, "Thou shalt not pollute in our air quality act and in out water quality act." We are not changing those at all. MEPA doesn't set any standard for water or air quality, nor does it say anything about whether mining or reclamation should be conducted and, if so, how and to what extent. Whether MEPA is substantive or procedural has not been discussed in the legislature for 18 years. If it is substantive, then MEPA itself dictates an agency's decision and it forces a particular action. If MEPA is procedural, then MEPA itself doesn't dictate a certain result, rather it is an information process, which is what was intended when it was originally passed. As long as the decision maker is fully informed, the decision maker can then make an appropriate decision under the specific circumstances and under the air quality act or the water quality act or the mining reclamation act, et cetera. There are all kinds of laws that are substantive and say, "Thou shalt not pollute." If there are other aspects of our environment that need specific protection, then we need to specifically protect them with a substantive law rather than relying on a procedural law to fill in the gaps. It's not fair to those areas of the environment, which may need protection, to rely upon a procedural act for protection. Having an agency relying on MEPA to provide the substantive environmental protection usurps the policy making power of this legislative body and doesn't adequately protect that which may need protection. We need to make sure that we have our MEPA laws in balance with the constitutional provisions of both the clean and healthful environment and the right to pursue a living in this state. We need to coexist in productive harmony with the environment.

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 38.5}

Ted Hoffmann, H & F Logging Inc., wanted to explain the consequences a contractor incurs by shutting down timber sales once operations have started. In November of 1998, they were

approached by a timber company to harvest a portion of a timber sale. After two on-site inspections they negotiated a contract. They had arranged housing for the crew. They began falling trees on December 18th. After 100,000 feet had been fell, they had arranged to bring in the trucks. On December 23rd they received a call saying that an injunction had been placed on the sale and all harvesting activities had to cease. As a result they lost $5,000 or more, in addition to lost time. It could have put them out of business. The logs are just laying on the ground rotting.

Cary Hegreberg, Montana Wood Products Association, said that MEPA has hurt people. He echoed the previous testimony. The EQC operates on a consensus basis, that means that everybody has to agree before a recommendation is made. The EQC can't reconcile some of the issues contained in MEPA. What it amounts to is that you either like the open-ended and subjective language of MEPA or you don't. His critics like it because they can use it to stop timber sales and activities. After 30 years there have only been 27 lawsuits around MEPA. What is the threshold of significance? At what point do we recognize it as a problem? The original vote in the House was 99 to 1. He doesn't think that those 99 people in 1971 would have supported the bill if they would have seen the resulting litigation that has stopped people from working.

Ed Regan, RY Timber Corporation, submitted written testimony. **EXHIBIT(nah35a14)**

Tim Ryan, Larex, stated that this bill does not change current environmental laws. It identifies the issues and improves efficiency. The efficiency that this bill allows will allow companies, in advance, to know how long they will have to be tied up in the permitting process.

Leo Berry, Burlington Northern Santa Fe Railroad, said that he helped draft the first set of rules to help implement MEPA. He struggled with what exactly MEPA was because there are no parameters or guidelines to it. It is good to clarify that it is procedural because to find otherwise would constitute an unauthorized delegation of authority to a state agency. The EIS helps in the planning process, but there is no legal impact to the statement. There is no substantive law telling the agencies what to do with the EIS. If the law were to be placed as substantive, it would place too much authority with the executive branch agencies. MEPA provides no guidelines as to what an agency is to do with the EIS.

Rita Windom, Lincoln County Commissioners, said that we need to listen to REP. YOUNKIN; she said it well.

Dave Skinner said that what this bill amounts to is when the green flag drops the BS stops. What he likes about this bill is the fact that it tells the agency that they better not be changing the rules.

Don Serba, Pulp and Paper Resource Council, concurred with Mr. Hegreberg's testimony. This act doesn't work for everybody.

Kim Lyles, Pulp and Paper Workers Resource Council, reminded the committee that what they do affects thousands of lives across Montana. We have the opportunity to fix things and make this a more business friendly climate.

Gail Abercrombie, Montana Petroleum Association, said that we are here to try to make MEPA last another 30 or more years. This makes it sensible. It keeps an agency from holding an operator hostage. This will put some responsibility on the legislature to make laws for the agencies to follow.

Donna Thorton, logging contractor, said that she is going to be the last generation of her family to stay in the timber industry, even though they have their own logging company and three teenage sons. They aren't able to work enough months of the year to provide meaningful employment for anyone, including their family. There are mills closing all over northwestern Montana. We have a state that is so rich in natural resources and we have mills closing all over the place. Anything that the legislature can do to turn the economy around needs to be done now. We don't have a lot of time left.

Ed Eggleston said that MEPA is a good law. Part of what makes it a good law is the fact that it can be changed to make it better. This bill will do this.

John Bloomquist, Montana Stock Growers Association, Montana Water Resource Association, said that this bill cuts at one of the key issues of MEPA: Is it substantive or procedural? MEPA is a procedural statute. This bill is good administrative law and good legislative policy and good government.

John Youngberg, Montana Farm Bureau, concurs with Mr. Bloomquist and urges committee support.

Roger Halver, Montana Association of Realtors, supports this legislation.

Frank Crowley, Asarco, showed three volumes of administrative rules of the DEQ. There are enough substantive requirements for those who are trying to operate in the state.

Steve Flynn, Louisiana Pacific, supports this law from a business perspective. You have got to love a bill that gives bureaucrats a time frame.

Patrick Heffernan, Montana Logging Association, wanted to reenforce that real harm has occurred because of a procedural statute. There are more lawsuits to come. They see this bill as being one piece of a puzzle that will affirm our future and provide a strategic safety net so that these well designed and fully environmentally compliant timber sales can go forward without undue influence and interference because of a procedural statute that is fatally flawed.

Don Allen, Western Environmental Trade Association, supports this bill.

Mike Collins, Independent Montana Miners, submitted written testimony. **EXHIBIT(nah35a15)**

Opponents' Testimony:

{Tape : 2; Side : B; Approx. Time Counter : 14.5}

John Wilson, Montana Trout Unlimited, submitted written testimony. **EXHIBIT(nah35a16)**

Bob Stevens submitted written testimony and supplemental information dealing with producing wind power. **EXHIBIT(nah35a17)** **EXHIBIT(nah35a18)**

Tracy Stone-Manning, Clark Fork Coalition, said that proponents will say that it costs too much and takes too much time. Often other influences cause the extended time and costs. The biggest problem with this bill is that it says an agency may not condition a permit unless it could show that the issuing of the permit without the conditions would create the likelihood that laws or standards would be broken. There would be countless ramifications of this. An example would be that mines are subject to a permit that includes traffic safety plans. It's not illegal for mines to run trucks through the community whenever they want, but it does make sense for communities to have a say as to when the trucks will go through their town. Under this bill, the MEPA process could no longer incorporate common sense traffic safety plans. It would be a grave mistake to scrap the ability to impose such conditions and simply hope that a company would restrict themselves. She feels that industry representatives are wrong when they say that gutting MEPA will provide more jobs.

Hal Harper said that things look different to the committee than they do to the rest of the public. He fears that what he reads and sees in the media is a blame game going on. In this case it is his belief that the environmental law and conservation laws are being blamed for the economic lows of the state of Montana. If you take your eye off of the real cause of the economic problems in Montana, you are not doing anyone a favor. The recommendations that stand out are the following: This law has saved a lot of litigation; this law has helped agencies make better decisions; find better ways to involve the public. He feels that the public is the one entity that is being forgotten at this point in time. If the committee passes this it allows the blame game to go any further and allows official policy of this legislature to say the reason that our economy is failing is because our environmental laws are to tough. If the committee wants to protect the remaining industrial jobs that we have and further the economy of the state, tackle the real problems and don't be blaming them on our environmental policy standards.

Jim Jensen, Montana Environmental Information Center, stated that in the EIS for Pegasus Gold's Diamond Hill Mine Project are listed some mitigation measures which were taken that don't have other statutory authority, such as fire prevention and control. He also pointed out that there is no air quality standard for asbestos; MEPA would be the only way to protect against that. How many hundreds of people have to die before we accept the value of sound environmental protection laws?

Janet Ellis, Montana Audubon, said that MEPA is substantive in two areas. **EXHIBIT(nah35a19)** All the mitigation that goes with a condition of a sale would be prohibited with this bill. No best management practices would be required if this bill passes. MEPA has been called a look-before-you-leap bill and that is what they want to keep it as.

Paul Hawks, Northern Plains Resource Council, Cottonwood Resource Council, submitted written testimony. **EXHIBIT(nah35a20)**

Toby Day pointed out that this bill doesn't cover noxious weeds. It does in some counties, but it won't in every county. If there is a project in a county where weeds are not controlled by a weed supervisor, then it won't cover them. Only 34 counties have a weed county control mechanism.

Paul Edwards said that there was no real purpose to this bill, except to gut and cripple MEPA. The proponents claim that this will bring on an influx of industrial development that will benefit us all. We have heard this before. This is a fool's bargain. It is appalling that in a state that not so long ago

was a wholly owned subsidiary of the monster snake Anaconda that took and took and left nothing behind but poverty, social dysfunction and the world's biggest, ugliest toxic hole in the ground, that this kind of thinking could rise from its grave to haunt Montana again. **EXHIBIT(nah35a21)**

Sherm Jenki said that he has learned to be cynical by watching the legislature. It is hard for him to believe that these things are done in a vacuum. He offered the following challenge to the committee: If SB 319 passes the Senate and comes to the committee, kill it. If you don't, then you are destroying part of the substance that is in place. Let's not sacrifice southeastern Montana.

Steve Kelly, Friends of the Wild Swan, opposes this bill.

David Dittloff, Montana Wildlife Federation, submitted written testimony. **EXHIBIT(nah35a22)**

Stan Frasier, Montana Conservation Voters, opposes this bill.

Joe Gutkoski, Montana River Action, opposes this bill.

George Ochenski, Confederated Salish and Kootenai Tribes, submitted written testimony. **EXHIBIT(nah35a23)**

Hope Stevens submitted written testimony. **EXHIBIT(nah35a24)**

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 49.9}

REPRESENTATIVE BOB STORY asked if the tribal lands fall under MEPA. **Mr. Ochenski** said that they did not. However, tribal citizens are citizens of the United States, the state of Montana, as well as tribal members. They are fully capable of participating in MEPA decisions on any land surrounding the reservations.

REPRESENTATIVE DEE BROWN asked Ms. Stone to explain how deregulation has caused thousands to lose their jobs. **Ms. Stone** said that it seems to her that if Montana Resources can't pay its bills because they are too high under deregulation, and therefore has to shut down, those workers are out of a job because of deregulation. **REP. BROWN** asked of Ms. Stone realized that deregulation doesn't take place for another year and a half. **Ms. Stone** said that she stands by her statement. She believes that the cutbacks in industry are a direct result of deregulation.

REPRESENTATIVE DOUG MOOD asked Mr. Berry if he was familiar with the Supreme Court decision of Vermont and Yankee Nuclear Power Corporation v. Natural Resources Defense Council. **Mr. Berry** is familiar with it, but thought that there were others who were better informed.

REP. MOOD asked if Mr. Wilson was familiar with the BMPs that are currently being done in Montana. **Mr. Wilson** is. **REP. MOOD** said that he understood his testimony to be that he thought a forest practices act would be something that is necessary if they pass this bill. **Mr. Wilson** said that was correct. **REP. MOOD** asked if he thought that a forest practices act would do a better job protecting the forest than the BMPs currently have done. **Mr. Wilson** said that his point was that in state forest sales the state agency can't set conditions that the BMPs be used. **REP. MOOD** asked if the BMPs are voluntary. **Mr. Wilson** said that they are voluntary, but the agency can make them a condition of a timber sale.

REP. MOOD asked REP. YOUNKIN, having heard the statement here that there is reference to better ways to involve the public, does the sponsor recall the testimony and the recommendations for better ways to involve the public. **REP. YOUNKIN** said that the first thing she sees is to amend the MEPA statute to clarify the value of public involvement under MEPA. There are six other ways listed to further clarify the value and purpose of public involvement.

REPRESENTATIVE KEITH BALES asked Mr. Wilson about the handout that he had presented. It, in essence, indicates that MEPA keeps things from being sited on private land where there might be archeological sites; where in MEPA does it say that? **Mr. Wilson** replied that he indicated that there was no statutory authority other than MEPA to prevent mitigating siting. **REP. BALES** asked if he would agree that the main controlling factor on that would be who owns the private land rather than anything in MEPA, and if there isn't anything in MEPA, they don't really have a say, do they? **Mr. Wilson** said that the private land owner does dictate what happens to historical sites and archeological sites on their property that have not been designated by the state historical officer. As part of the MEPA process you could have that site designated as a state historical site and then you could mitigate it through MEPA.

REP. BALES asked a question of Mr. Hawks. He was talking about an agreement between the mine and the people there, was that a voluntary agreement by the mine? **Mr. Hawks** said that it was. It was a negotiated agreement and it was legally binding.

REP. BALES clarified that it was not mandated. **Mr. Hawks** said that they were required to have a traffic plan. They took it a step further and put a view on that traffic plan so they knew what it would look like and they agreed to that. **REP. BALES** asked if the same thing could have been done by the local community.
Mr. Hawks said that he would think that in terms of a safety factor it could be. He emphasized that this agreement was done by people from the community.

REPRESENTATIVE JOAN HURDLE said that they have heard that they need to enact this law so that timber projects can go forward and that the MEPA process has stopped a lot of good timber projects. Could Mr. Kelley comment on that? **Mr. Kelley** said that he thinks people are frustrated with certain things and they are blaming the law. There are a lot of things that go into these studies. In his opinion, the DNRC is not the best and brightest agency in preparing environmental documents. Nobody equals DNRC in volume and trying to hide the trick. There is always a trick in there. **REP. HURDLE** couldn't see any signs of any serious delays in the process at all. **Mr. Kelley** doesn't think that delay is a huge problem. The recommendations of the study committee have addressed adequately the time frames. It is not the law causing the problems. There is bad blood among the primary opponents.

REP. HURDLE said that this seems to be a semantic argument. Certainly there are gaps in our substantive laws, if we say that this is procedural, won't that cause a problem? Why are we doing this? **REP. YOUNKIN** said that the EQC has studied this. The recommendation was that the legislature should determine whether it is substantive or procedural. **REP. HURDLE** asked for that citation. **REP. YOUNKIN** said it was on page 173. "The legislature should define whether MEPA is a substantive or procedural law or both." To answer the question of why are we doing this, it is because we haven't done it. This legislative body has never taken its responsibility to specifically define what this law is. **REP. HURDLE** asked if the sponsor was concerned that this would put a stop to a lot of mitigation which has brought about some good things. **REP. YOUNKIN** said that she is not. There is nothing in the bill that says that the agencies can not discuss mitigation. There is nothing that prevents that from happening.

REPRESENTATIVE RON ERICKSON asked the sponsor to look at page 1, lines 20 and 21 of the bill. It says, "All agencies of the state shall identify and develop methods and procedures that will ensure that presently unquantified environmental indemnities and values may be given appropriate consideration in decision making." Is it the sponsor's intention to cross out this line of

the law? **REP. YOUNKIN** said it is not her intention to strike that from the statute. Wiser decisions can only be made with information. This is an information gathering tool so that we can make wise decisions. **REP. ERICKSON** said that on page 3, section 4, it says that there has to be something already in statute before you can impose conditions. Why is it that lines 20 and 21 on page 1 don't counteract this portion? **REP. YOUNKIN** said that if there is something that needs protection then we need to have a substantive law to protect it. We can't decide to protect that based on this process alone. There needs to be an underlying substantive law because if you don't have that you can't provide adequate protection to that resource.
REP. ERICKSON said that until there are those statutes, these two parts of the bill are in conflict. **REP. YOUNKIN** said that some of those things can be covered already in statute under the community impact section of title 90. We should fill those gaps.
REP. ERICKSON asked why not wait until there are no gaps.
REP. YOUNKIN said that we will never discover what all those gaps are. We are an evolving society. In order to provide adequate protection there needs to be a specific substantive law.

REPRESENTATIVE DAVE WANZANREID asked Mr. Harper, if this bill is passed, will it increase the yield off of school trust lands?
Mr. Harper said that there is a target for timber cuts on state land that is set and will be maintained. **REP. WANZANREID** asked, if this bill passes, what gaps does he see that will exist in future timber sales on school trust lands. **Mr. Harper** said that there are a number of gaps that will become more apparent as things go on. If you declare MEPA to be solely procedural, those gaps are immediate. If you do not, those gaps are not immediate.

REPRESENTATIVE GAIL GUTSCHE said that by the testimony that was heard today, it looks like it might tie the hand of DEQ and other agencies. If this bill passes, do you believe that DEQ could no longer condition a permit? **Mr. North** said that is the way that he reads it. In the years that he has been with the agency he is aware of four or five instances where we have imposed conditions based on a substantive MEPA. Those have mainly been in the area of traffic conditions.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 22.5}

REP. YOUNKIN said that one of the statements we had was about the blame game. This bill is not being given to you as the solution to all of Montana's economic woes. It is not true that this bill will solve all of the economic problems. There are many, many reasons for the economic woes, and she feels that this is one of

those reasons. It's not the reason, but it adds to the problems that they are facing. The community impact laws in title 90 will continue to allow the departments to put conditions on various projects. There aren't as many gaps as you might think. There have only been three cases where MEPA has been applied substantively. We can fill those gaps. She asked the committee to read the chapter six in the green book in regards to the substantive versus procedural issue. There have been many court cases that have said that MEPA is procedural. That is what our courts have found; that is what the Supreme Court has found. All she is asking for is a little clarification so that they can stop asking the question and stop wondering if this is procedural, substantive or both. The governmental process established in MEPA should not be the reason for preventing an industry from conducting its business. We as the policy makers should make it clear that this process should not dictate a particular result. That is why we have our underlying substantive acts. They have not suggested that our air quality act or water quality or any other substantive laws should be weakened. Those are good laws. We are not trying to weaken any environmental laws. All we are trying to do is make a process work better and make sure that the governmental process is not specifically what dictates the outcome. The reason to prevent an action should be because it would degrade our environment beyond repair to the extent that humans and plant life and wildlife and aquatic life can't coexist in productive harmony. We must find a balance between our presence and the use of our natural resources which will permit high standards of living in Montana and allow for a wide sharing of life's amenities.

ADJOURNMENT

Adjournment: 7:10 P.M.

REP. CINDY YOUNKIN, Chairman

ROBYN LUND, Secretary

CY/RL

EXHIBIT(nah35aad)

HB- 473

R•Y TIMBER, INC.

Corporate & Sales Office:
N. End of Maple Street • P.O. Box 220 • Townsend, MT 59644 • Phone (406) 266-3111 • Fax (406) 266-3115
Manufacturing Site:
5284 Hwy. 89 South • P.O.Box 990 • Livingston, MT 59047 • Phone (406) 222-3360 • Fax (406) 222-8748

MEPA TESTIMONY
2/12/01

EXHIBIT 14
DATE 2/12/01
HB 473

Good afternoon. My name is Ed Regan; I'm representing RY Timber Corporation, which is headquartered in Townsend Montana. We operate a sawmill in Livingston and one in Townsend. RY Timber creates about 400 jobs in our sawmills and logging operations throughout the state.

I would like to inform the committee about an experience RY faced in 1999 on the West Middle Fork/Blacktail Timber Sale when a group of activists decided to litigate this sale under the MEPA statute. The timber sale is located on state lands administered by the DNRC in Dillon Montana. Timber harvesting included the removal of 5mmbf using helicopters. The sportsmen's group petitioned the court to stop the timber harvest because they alleged that DNRC should have prepared a supplement to the FEIS that reflected minor changes between that document and the actual fieldwork. **Higher than anticipated timber volume (i.e. prescription remained the same-same leave trees-no environmental differences from FEIS), failure to consider whether a previous logging unit contained old growth timber and disagreement over the department's use of telemetry data proving elk winter range would not be harmed**

constituted their reasons for the lawsuit. In its final order the court ruled in favor of the Department on all counts except one small procedural issue. **(Why the Green classification was used exclusively when Remington's classification is found in SLFMP and he thought should have been considered / DNRC considered Remington only for guidance)** In fact the judge prefaced his ruling on that count by saying "he was not surprised an astute lawyer going through all of the documents was able to find an error".

Our company purchased and posted a bond for the Blacktail sale in August of 1998. We planned to harvest about 70% of the volume during the 1999 logging season. At the time we were awarded the Blacktail Contract our firm also owned and operated a small helicopter logging company that employed about 25 people. This timber sale was an ideal opportunity that would allow us to harvest a large volume of helicopter wood on what we thought would be a profitable logging job. Because of the lawsuit RY lost the 1999-logging season. We had difficulty finding last minute work for the helicopter crew because at that time of the year most logging contracts are already spoken for. Additionally our sawmills had to find replacement volume in order to keep running through the coming winter and spring breakup. Most of this replacement volume came from jobs that had to be logged during the winter months at higher production cost. Another hidden expense to RY was the off loading, storage, and reloading of road construction materials destined for the state timber sale. Instead of delivering directly to the job site we had to store these

supplies **(bridge, culverts, planking, fencing material)** in Dillon until the timber sale started up. Within six months after the Blacktail litigation we ended up grounding our helicopter, terminating those employees and shutting down the helicopter company. Unfortunately, short of another lawsuit, there are no provisions in our contract with the State of Montana for reimbursement.

MEPA, which I now refer to as "The Montana Economic Prevention Act", needs to be streamlined and tightened-up. We have to make it harder for eco-activist groups to file lawsuits. In the end, these folks should be held financially accountable for their actions **(Bonds)**. I would bet that most of the other lawsuits involving MEPA also center on process & paperwork mistakes rather than violations of meaningful environmental standards. The law in its current form requires expensive and time-consuming analysis of activities, which don't always cause a significant impact. "Working people of Montana need to rescue our economy from the clutches of the environmental lobby and their army of lawyers that are bought and paid for by the wealthy tax-free foundations." Passage of the MEPA amendments before you today would sure help level the playing field. Thank you for the opportunity to weigh in on this issue.

Edward W. Regan
Resource Manager

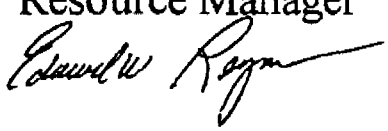

EXHIBIT 15
DATE 2/12/01
HB 473

Comments on House Bill 473 by Mike Collins, Helena, Montana

February 12, 2001

- 75-1-201 (b)(ii)

Within the context of this part, what is the scope of "appropriate"? (page 1, line 21) It is assumed that "appropriate" also applies to economic and technical considerations but no bounds are drawn as to what extremes might be reached. The term "appropriate" is subjective in nature and lends itself to one having to choose among defining words such as correct, proper, precise, relevant, rightful and suitable.

- 75-1-201 (1)(b)(iii)(page 1, line 23) and (1)(b)(iv)(D)(page 2, line 2)

These sections need special (precise) attention as it relates to the state constitution, Article II. Sections 3, 10, 17, and 29; and further to 2-10-101 (Private Property Assessment Act, L. 1995), 102, 103, 104, and 105, MCA.

- 75-1-201 (1)(d)(page 2, line 29)

This part is rather troubling in respect to the language used in that the true shape of this scheme is revealed.

An owner of private property is forced to become an applicant (project sponsor)(Page 4, line 15), apply and pay a fee for an "entitlement for use" or "permission to act" at the whim of a government agency(s) in the form of a permit, license, certificate or agreement. The "entitlement for use" or "permission to act" is conditioned by the "terms or conditions" of the entitlement. The private property owner is exposed to possible enforcement actions, both administrative and civil, through this whole process. Being forced "to ones knees" by the construction of a government process is not right unless one has been accused, tried, found guilty and then received sentence for punishment.

When a private property owner has proposed to make full use of his right to use and enjoy his property and when the legal and lawful use of his property provokes no claim that the public health and safety is at risk, it is submitted that governmental interference and the interference by the "public" is unwarranted. The issues of privacy and trespass need to be addressed, especially if there exists no claim to support a public health or safety risk, real or perceived, as a result of a property use. Speculation is probably at least as dangerous within the legal confines as it is within the circles of money matters or matters of the heart.

The "bedroom" is thrown open to the concerned "public" and public and private organizations scrutiny for all to judge when framed within the provisions of a "state government action". If 75-1-201 (1)(a)(page 1, line 14) is to be truly observed, private property use must be addressed within the above noted sections of the state constitution, the state code and most certainly with respect to Amendment V and Amendment XIV of the national constitution.

- **New Section. Section 2. Definitions (page 4, line 11)**

(2) "Environmental review"
Reference is made to the "physical environment" and there is found no definition as what part of the environment this may apply to. It is assumed, as the context implies, that it may mean something other than the "human environment". Does this refer to landscape or a person's dwelling? Might this be a component part of the "natural environment"? Or is this what is referred to as "Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings"? If the latter is used, can this be a valid standard to which land use is measured?

NOTE:

- **(75-1-103 (1)) refers to the "interrelations of all components of the natural environment" and then "further recognizes that governmental regulation may unnecessarily restrict the use and enjoyment of private property" and then declares that it is the continuing policy of the state of Montana "to recognize the right to use and enjoy private property free of undue government regulation". This points to the above noted concerns in reference to 75-1-201 (1).**

- **75-1-103 uses "overall welfare" and "general welfare" which has no definition and can only be assumed to make reference to the "public health and safety". So how far does the "governmental regulation may unnecessarily restrict the use and enjoyment of private property" go before it is deemed a property takings or a damage to property for a public use? How do the "unnecessarily restrict" phrase and the "undue government regulation" phrase find equitable parity? Who is made to suffer the injury on the one hand and who stands to take benefit with no investment on the other? I submit that this line of questions needs further review.**

MEPA as a "social engineering scheme" and MEPA as a "landscaping" tool is quite successful. MEPA as an environmental protection tool to protect public health and safety is defective. MEPA as a battering ram to devastate industry, communities and people is quite successful.

- **75-1-106. Private property protection**

This section needs to be asserted as it relates to 75-1-201 (1)(b)(iii) and (1)(b)(iv)(D); and further to 2-10-101, MCA.

□ END

MONTANA ENVIRONMENTAL POLICY ACT

75-1-102 Purpose
"to protect the right to use and enjoy private property free of undue government regulation"

75-1-103 Policy (1)
"and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property"

75-1-103 (2)(d)
"protect the right to use and enjoy private property free of undue government regulation"

75-1-103 (3)
"The legislature recognizes.....that each person is entitled to use and enjoy that person's private property free of undue government regulation"

75-1-201 General directions (1)(b)(iii)
"identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D)"

75-1-201 (D)
"any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed"

Montana Constitution, Article II. Section 3. Inalienable rights. "All persons are born free and have certain inalienable rights. They include.....the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways."

- **Montana Constitution (1889), Article III. Section 3. Declaration of Rights. "All persons are born equally free, and have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring possession and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways."**

Montana Constitution, Article II. Section 10. Right to privacy. "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

Montana Constitution, Article II. Section 17. Due process of law. "No person shall be deprived of life, liberty, or property without due process of law."

Montana Constitution, Article II. Section 29. Eminent domain. "Private property shall not be taken or damaged for public use without just compensation to the full extent of loss having been first made to or paid into a court for the owner."

Several questions arise with regard to the above stated references to the Act and the various cited sections of the state constitution.

(1) **Where is the distinction made between that which is held to be a "public use" and that which is held to be a "private use" for the purpose of protecting the "public health and safety" and equally protecting the "right to use and enjoy private property free of undue government regulation"? What is the standard for measuring government regulation so that it can be known when the *undue* threshold is met?**

(2) **Is it not true that a disproportionate burden is placed upon the back of a private property owner by MEPA when compared to those persons who do not own property?**

(3) **If, in fact, the "environment" can be held to be a "common public property", should not the protection afforded the same be paid for equally by all who use this "public property"?**

(4) **How is the "public" made to pay for the protection of the "public health and safety" when the protection is at the expense of a narrow group or class of persons (private property owners)?**

(5) **Are not the various controlling sections of MEPA in violation of the above cited sections of the state constitution if one were to apply the same narrow standards as those used in MEIC v. DEQ?**

(6) **Why are all persons not forced into a MEPA-like parallel system to protect the "human environment" of the "public" in regards to murder, rape and robbery based on the same anticipatory presumptions?**

(7) **How many "public" (MEPA) uses of private property are truly health and safety issues not already addressed by statute and how many are merely "landscaping" issues? Should not a clear distinction between the two exist?**

(8) **What are the boundaries which define "compelling state interest" as it relates to MEPA? If the "compelling state interest" is found within the protection of the *environment*, the protection of *natural resources* and the protection of a *clean and healthful environment*, why do these domains have no definition?**

(9) **Where within the MEPA framework is there to be found, a discussion concerning the exemption of the "natural" ongoing processes of *pollution, impairment and destruction* of *natural resources* so that a clear distinction can be had concerning only those which are the subject of legislation and regulation. Is the only trigger to that distinction one of an application for a required permit, certificate or a license?**

(10) **What other "public" (MEPA like) process invades the sanctity of both the right of privacy and the rights of private property owners with respect to anticipatory assumed consequences?**

(11) **What is the baseline or control point at which reference is made in regard to the measure of success or failure of MEPA in achieving legislative intent within constitutional limits?**

(12) **The 1972 constitutional change found at Article II. Section 3., "clean and healthful environment", did most certainly not change the definition of *inalienable rights,* but did add words to which no definition was attached.**

(13) ***A Guide to the Montana Environmental Policy Act, October 2000*** **contains many "interpretative" phrases and many words which are not defined as they relate to MEPA. Many claims are made as to what MEPA can and will do in the purpose statement, none of which has an administrative and enforcement strategy suggested for attaining any of the stated goals.**

(14) **It is believed that a salesman with sufficient skills could sell a chicken to you and represent it as a cow if you had never seen either. It is further believed that many of us have learned the difference because we know the definition of one or the other or both. Why then are we willing to accept MEPA without knowing the "difference"? Why are those who promote MEPA not willing to provide definitions to their words so that the intent of the words can be understood?**

(15) **In reality, does not MEPA stand for the Mine Elimination Policy Act?**

EXHIBIT 16
DATE 2/12/01
HB 473

HB 473 Younkin
Testimony of Montana Trout Unlimited
February 12, 2001

For 30 years the legislature, executive branch and courts have interpreted MEPA as BOTH procedural and substantive. We think this is both wise and correct.

HB 473 makes MEPA a procedural act only. It therefore would rely upon the statutory authority found in acts like the Clean Water, Clean Air, Reclamation and a host of other laws to assure our constitutional right to a clean and healthful environment. There is a big problem with this approach! The problem is acknowledged statutory authority GAPS … places where no legal authority exists to protect or even mitigate negative impacts to our environment.

Your bipartisan committee which studied MEPA fully recognized that there were gaps in the regulatory authority needed to protect our environment and specifically recommended that this legislature "provide the agencies with specific additional authority under those (substantive) laws to address regulatory gaps." *

We found what we believe to be some obvious statutory gap examples, if this bill becomes law, where Montana's environment would clearly be negatively impacted and agencies would not have authority to condition a permit or license to prevent it!

Please see attached sheet

We don't portend to be experts in ferreting out gaps in regulatory authority. These are only intended to be few examples to illustrate the point; dozens more could exist.

We ask that you look before you leap. We ask that before you act on this bill you ask the experts… legislative council and the agencies charged with implementing MEPA where they think the regulatory gaps are and what the resultant detrimental impact to our environment would be.

The point here is if MEPA remains both procedural and substantive all of these gaps could be closed through reasonable mitigation measures. Why would you want to take that tool out of the toolbox?

Also, the point here is relying solely on the patchwork of existing laws and not MEPA to substantively protect Montana's environment simply won't work. There are too many gaps in statutory authority.

For our citizens to truly receive the guarantee of a clean and healthful environment MEPA has to remain the substantive safety net to close acknowledged and recognized gaps in our existing laws.

* Improving the Montana Environmental Policy Act Process, Report to the 57th Legislature, Pp 173

HB 473

EXAMPLES OF STAUTORY GAPS AND DETRIMENTAL EFFECTS ON THE ENVIRONMENT

Historical and archeological sites – No statutory authority other than MEPA exists to prevent or mitigate siting of a mine, pipeline, road or other similar industrial facility on top of a valuable historic or archeological site located on private land.

Noise abatement- No statutory authority other than MEPA exists to require noise abatement in a permit for and industrial facility.

Wildlife habitat protection- No statutory authority exists other than MEPA to protect wildlife habitat, such as critical winter range, migration routes or calving areas, unless the wildlife is a threatened or endangered species.

Safety and transportation- No statutory authority exists other than MEPA to protect or provide mitigation for citizens from potential traffic or safety problems from the siting of a mine, timber sale or other industrial facility.

Forest practices- No statutory authority other than MEPA exists to mandate Best Management Practices or to protect wildlife habitat on state timber sales.

Soils degradation- No statutory authority exists other than MEPA to mitigate or prevent soils degradation (not contamination).

Fisheries degradation- No statutory authority exists other than MEPA to mitigate or prevent fish kills as a result of a change in water right use or change in operation of a state dam.

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Corp. The permits
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products plant in
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comes to environ-
Paul Hansen, ex-
ık Walton League
member.
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ired.

org) found [illegible] illion personal computers will become obsolete by 2007. Consumers and small business owners can ship old computers to **IBM** (877/999-7115, www.ibm.com/environment) for $29.95. IBM will reuse as many parts as possible or refurbish the system and donate it to **Gifts in Kind International. Gateway** (888/285-6201, www.gateway.com/recycle) offers up to $50 rebates on new computers if customers recycle old computers. **Parents, Educators and Publishers** (www.microweb.com/pep site) lists groups that assist with donations.

■ **Winslow Environmental News** (617/788-1600, www.winslowgreen.com) reports that a green stock index of 11 emerging energy companies outperformed the seven largest oil and gas corporations in the S&P 500 by a huge margin over the last year. Despite the surge in oil prices, the oil and gas stocks rose just 8% for the 12 months ending Oct. 4, while the green index of wind, solar, fuel cell, battery and flywheel companies skyrocketed 113%. The green index: **Vestas Wind Systems, NEG Micon, IMPCO Technologies, Evercel, AstroPower, American Superconductor, Ballard Power Systems, FuelCell Energy, SatCon Technology Corp., Active Power and York Research Corp.**

CONTACT 442-9424
EXHIBIT 17
DATE 2/12/01
HB 473

A green stock index of 11 emerging energy companies outperformed the seven largest oil and gas corporations in the S&P 500 by a huge margin over the last year.

5

The following exhibit
is a pamphlet or a newspaper which can
not be scanned.

Exhibit - 18
2.12.01
HB 473

The complete exhibit is located with
the minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena. MT 59620-1202
[406] 444-4775

EXHIBIT 19
DATE 2/12/01
HB 473

DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER PROTECTION BUREAU
Metcalf Building, Helena, Montana 59620
(406) 444-3080

★ = Substantive statutes

ENVIRONMENTAL ASSESSMENT (EA)

Division/Bureau: Permitting & Compliance Division/Water Protection Bureau

Project or Application: KGH Operating Company; MPDES permit issuance, MT-0030520

Description of Project: This application is for the discharge of produced-water from an oil production well. The discharged water will flow into an unnamed ephemeral drainage of the North Fork Dry Creek in Carbon County. The discharged water will flow down the ephemeral drainage and be collected in a reservoir by the landowner. The water collected in the reservoir will be used for livestock consumption. No discharge of produced-water to surface water is allowed. The unnamed ephemeral drainage of the North Fork Dry Creek, is classified "B-1" by the Montana Surface Water Quality Standards. This ephemeral drainage in the area of discharge is not listed on Montana's 303(d) list.

Benefits and Purpose of Proposal:
The discharged produced-water will be used by the landowner for livestock watering.

Description and analysis of reasonable alternatives whenever alternatives are reasonably available and prudent to consider:
None

Listing and appropriate evaluation of mitigation, stipulations and other controls enforceable by this or another government agency:
See Statement of Basis

Affected Environment and Effects from the Proposed Project:

Key to Rank	
NA	*Not applicable*
N	*No effects*
B	*Potentially beneficial effects*
A	*Potentially adverse effects*
M	*Corrective action required*
P	*Additional permits will be required*

Rank	Consideration	Remarks
	PHYSICAL AND BIOLOGICAL ENVIRONMENT	
N	1. SOIL SUITABILITY, TOPOGRAPHIC AND/OR GEOLOGIC CONSTRAINTS (soil moisture, unstable soils or geologic conditions, steep slopes, erosion potential, subsidence potential, seismic activity)	

	2.	HAZARDOUS FACILITIES (power lines, hazardous waste sites, distances from explosive and flammable hazards including chemical/petroleum storage tanks, underground fuel storage tanks and related facilities such as natural gas storage facilities and propane tanks)	
N	3.	AIR QUALITY (effects to or from project, dust, odors, emissions)	
N	4.	GROUNDWATER RESOURCES & AQUIFERS (quality/nondegradation, quantity/reliability, distribution, uses/rights, number of aquifers, mixing zones)	
B	5.	SURFACE WATER RESOURCES (quality/nondegradation, quantity/reliability, distribution, uses/rights, storm water controls, source of community supply, community treatment, mixing zones)	The landowner has requested the use of the discharged water for livestock watering.
N	6.	VEGETATION AND WILDLIFE SPECIES AND HABITATS, INCLUDING FISHERIES AND AQUATIC RESOURCES (threatened, endangered, sensitive species, prime habitat, population stability, potential for human wildlife conflicts, effectiveness of post-disturbance plans)	
N	7.	UNIQUE, ENDANGERED, FRAGILE, OR LIMITED ENVIRONMENTAL RESOURCES (biologic, topographic, wetlands (within one mile), floodplains (within one mile), scenic rivers, natural resource areas, etc.)	
N	8.	LAND USE (waste disposal, agricultural lands [grazing, cropland, forest lands, prime farmland], recreational lands [waterways, parks, playgrounds, open space, federal lands), access, commercial and industrial facilities [production & activity, growth or decline], growth, land-use change, development activity)	
N	9.	HISTORICAL, CULTURAL, & ARCHEOLOGICAL (sites, facilities, uniqueness, diversity)	
N	10.	AESTHETICS (visual quality, nuisances, odors, noise)	
N	11.	DEMANDS ON OR CHANGES IN ENVIRONMENTAL RESOURCES INCLUDING LAND, WATER, AIR, OR ENERGY USE (need for new or upgraded energy sources, potential for recycling, etc.) (See (4), (5), and (8).)	

federal act only

Rank	Consideration		Remarks
		IMPACTS ON THE HUMAN POPULATION	
N	12.	CHANGES IN DEMOGRAPHIC CHARACTERISTICS (population quantity, distribution and density, rate of change)	

N	13.	GENERAL HOUSING CONDITIONS (quality, quantity and affordability)	
N	14.	POTENTIAL FOR DISPLACEMENT OR RELOCATION OF BUSINESS OR RESIDENTS	
N	15.	PUBLIC HEALTH AND SAFETY (medical services and facilities, police, fire protection and hazards [see (2)], emergency medical services [see (8), LAND USE for waste disposal])	
N	16.	LOCAL EMPLOYMENT AND INCOME PATTERNS (quantity and distribution of employment, economic impact)	
N	17.	LOCAL AND STATE TAX BASE AND REVENUES	
N	18.	EFFECTS ON SOCIAL STRUCTURES AND MORES (social conventions/standards of social conduct), DEMANDS ON SOCIAL SERVICES (law enforcement, educational facilities [libraries, schools, colleges, universities], welfare, etc.)	
N	19.	TRANSPORTATION NETWORK (condition and use of roads, traffic flow conflicts, rail, airport compatibility, etc.)	
N	20.	CONSISTENCY WITH LOCAL ORDINANCES, RESOLUTIONS, OR PLANS (conformance with local comprehensive plans, zoning or capital improvement plans)	
N	21.	REGULATORY RESTRICTIONS ON PRIVATE PROPERTY RIGHTS (*Are we regulating pursuant to a police power? Does the Agency action restrict the use of the property beyond the minimum necessary to achieve compliance with the Act? What are the costs of such additional restrictions resulting from proposed permit conditions? Are there other, less restrictive ways of achieving the same goal?* See your assigned legal counsel for assistance preparing this section. [See the Private Property Assessment Act checklist accompanying this permit for details.]	

Private Property Takings Assessment and Discussion:

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

Does the proposed agency action have takings implications under the Private Property Assessment Act?

SM: Rev.1

Query		YES/NO	Remarks/Justification
1.	*Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?*	NO	No measurable effects to private property are expected due of this permit.
2.	*Does the action result in either a permanent or indefinite physical*	NO	No physical occupation of private property is granted by this permit.

Janet Ellis

occupation of private property?		
3. *Does the action deprive the owner of all economically viable uses of the property?*	NO	This action will not affect the economic viability of private property.
4. *Does the action deny a fundamental attribute of ownership?*	NO	No ownership rights will be affected by this permit.
5. *Does the action require a property owner to dedicate a portion of property or to grant an easement?*	NO	(If NO, then skip to (6).)
a. *Is there a reasonable, specific connection between the government requirement and legitimate state interests?*		
b. *Is the government requirement roughly proportional to the impact of the proposed use of the property?*		
6. *Does the action have a severe impact on the value of the property?*	NO	The action does not have a severe impact of the value of property.
7. *Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally?*	NO	(If NO, then skip to (8).) The action does not cause disturbance to property.
a. *Is the impact of government action direct, peculiar, and significant?*		
b. *Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?*		
c. *Has government action diminished property values be more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?*		
8. *Do taking or damaging implications exist?* [1] *Taking or damaging implications exist if the answer to questions 5a or 5b is NO, or if the answer to any other question is YES.*	NO	

[1] *If taking or damaging implications exist the agency must comply with § 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.*

Other groups or governmental agencies contacted or which may have overlapping jurisdiction:

None

Public Involvement:

Thirty day public notice and comment period.

Individuals or groups contributing to this EA:

State of Montana, DEQ Permitting & Compliance Division, Water Protection Bureau

Summary of Issues:

See Statement of Basis

EXHIBIT 20
DATE 2/12/01
HB 473

Official NPRC Testimony on HB 473

My name is Paul Hawks. I am a Sweet Grass County rancher from Melville and am presenting testimony on behalf of the Northern Plains Resource Council. First, this bill represents an end run around the Environmental Quality Council's interim study recommendations. The EQC recommended Senate Joint Resolution 3 to handle issues such as those raised by HB 473.

Second, HB 473 will prevent state agencies from placing mitigation measures and conditions on approval of projects to minimize impacts on the environmental and local communities. For example, at the East Boulder Mine in my community, the Stillwater Mining Company has established a traffic reduction plan that requires busing and car pooling of its employees. It also consolidates loads of materials for delivery to reduce the truck traffic on Highway 298 up the Boulder Valley and to restrict commercial hauling on weekends and holidays. SMC has a similar plan at its Nye Mine in Stillwater County.

As you can imagine, traffic on the narrow, winding Boulder Road, and the even narrower East Boulder county gravel road is a bone of contention in our rural community. These mitigation measures minimize impacts on local residents along the access roads leading to the mine projects, reduce the likelihood of serious accidents, and reduce the disruption for local ranching operations that are not used to operating with such heavy and dangerous traffic.

HB 473 would not allow these mitigation measures. It would be a mistake for our community. Please kill this bill and consider such issues in SJR 3. Thank you.

TRAFFIC ON BOULDER VALLEY ROADS IN SWEET GRASS COUNTY
*projected by East Boulder Mine EIS (1992)

FAS 298: Main Boulder Road
increase from 189 ADT at McLeod (add 258 mine) to 447 ADT, a 137% increase*

SG 31: County Road (gravel)
increase from 90 ADT (add 258) to 348 ADT, a 286% increase*

FS 205: Forest Service Road (gravel)
increase from 18 ADT (add 258) to 276 ADT, a 1433% increase*

ACTUAL MINE TRAFFIC IN 2ND THROUGH 4TH QUARTERS, 2000

With both truck traffic and mine employee traffic (600 employees at 2.5 per vehicle), the EIS projected total traffic at 267 vehicles per day.

SMC's traffic reduction plan has reduced this to number to an average of 45 vehicles per day in 2000. This is a reduction of 83%!

TRAFFIC ON BOULDER VALLEY ROADS IN SWEET GRASS COUNTY
*projected by East Boulder Mine EIS (1992)

FAS 298: Main Boulder Road
increase from 189 ADT at McLeod (add 258 mine) to 447 ADT, a 137% increase*

SG 31: County Road (gravel)
increase from 90 ADT (add 258) to 348 ADT, a 286% increase*

FS 205: Forest Service Road (gravel)
increase from 18 ADT (add 258) to 276 ADT, a 1433% increase*

ACTUAL MINE TRAFFIC IN 2ND THROUGH 4TH QUARTERS, 2000

With both truck traffic and mine employee traffic (600 employees at 2.5 per vehicle), the EIS projected total traffic at 267 vehicles per day.

SMC's traffic reduction plan has reduced this to number to an average of 45 vehicles per day in 2000. This is a reduction of 83%!

EXHIBIT 21
DATE 2/12/01
HB 473

Madam Chairman, et. al.:

My name is Paul Edwards and I live in Helena. I speak for myself and many thousands of Montanans who, incredibly, are represented neither by the majority of this committee, nor this legislature, in matters that will affect the quality of their lives forever.

By now it is common knowledge that this bill and its three companion bills, have no other purpose than to gut and cripple the Montana Environmental ~~Protection~~ POLICY Act. Why is this proposed? The proponents of these bills claim, with more or less straight faces, that by eliminating serious environmental review Montana will enjoy a great and sudden influx of gigantic industrial development that will benefit all Montanans.

If it seems to you you've heard that song before... well, you have.

It's the same Company Store anthem always sung by the flacks, shills and boomers on the unofficial payroll of Big Extractive Industry, and it goes like this: let us in without conditions, let us take what we want, any way we want it, get the hell out of the way and let us make money. And if you lie down and make nice and don't scream until we've had all we can take and are gone, we'll pay a few of you wages. And we'll leave you a nice manmade lake like the Berkeley pit, or colorfully altered streams like Belt Creek, or artfully re-configured mountains like Zortman Landusky.

Can a sorrier fool's bargain be imagined?

It is appalling to me that in a State which was once, not so long ago, a wholly owned subsidiary of the monster snake Anaconda, that took and took and took and left nothing behind but poverty, mass social dysfunction, and the world's biggest ugliest toxic hole in the ground, that this kind of thinking could rise from its stinking grave to haunt Montana again.

Eliminating MEPA—ripping the guts out of it as you are trying to do here today, though most of you would deny it—will do nothing but lay Montana down again for exploiters and pirates whose dirty, fast and loose, screw the consequences enterprises cannot face the clear light of day and public scrutiny.

And what can you gain? Set up a shameless trade of some more of Montana's last clean water and air and still glorious mountains, prairies and forests for the sleazy hustle of polluting industry which siphons off its profits to distant corporate giants and you cheat Montana two ways: you lose economically and you lose another piece of what makes Montana the wondrous place it still is.

Willy Nelson had a lyric that said, "I guess I can't blame 'em for takin' her bounty, I just wish they'd taken her slow." Well, they've taken her bounty too fast, for too long. It's up to us to defend ~~her~~ MONTANA now. MEPA does that. Kill this bill.

EXHIBIT 22
DATE 3/12/01
HB 473

MONTANA WILDLIFE FEDERATION

Six decades of
preserving our
hunting, fishing
and
heritage

Montana Wildlife Federation Testimony on House Bill 473
By David Dittloff, Conservation Director

I. Introduction

II. HB 473 would work against hunters, anglers and the general public in several ways. By denying the agencies the ability to mitigate certain impacts, the bill would unduly hamstring agencies looking out not only for the environment, but also for the public's safety and economic well-being. Here are some examples.

A. Weeds

1. Weeds are a critically important issue. Spotted knapweed, leafy spurge, and other noxious weeds displace forage for livestock and wildlife alike. As a result, big game populations suffer and Montana ranchers lose millions of dollars each year.

2. MEPA currently allows state agencies the discretion to mitigate actions that would exacerbate weed dispersal.

3. For instance, when Fish, Wildlife & Parks acquires new fishing access sites, they often incorporate preventative weed control measures as part of their MEPA analysis. To my knowledge, there is no statute or regulation requiring them to do so.

4. Along the same lines, the DNRC often incorporates weed prevention measures as part of their MEPA analysis of timber sales on state lands—again with no controlling statute or regulation requiring them to.

5. HB 473, by denying agencies the ability to mitigate for concerns that aren't directly addressed by other statutes or regulations, would prevent these types of weed prevention efforts from being considered under MEPA, thereby taking away an important tool in our fight against noxious weeds.

P.O. Box 1175, Helena, Montana 59624 tel: 406-449-7604 fax: 406-449-8946 e-mail: mwf@desktop.org.internet

B. Game Farms

1. No matter what your opinion on I-143, last November's vote showed that many Montanans have disease and public safety concerns with game farms.

2. MEPA allowed the Department of Fish, Wildlife & Parks the ability to mitigate for some of these concerned in their permitting process.

3. Some of the stipulations involved public safety—like requirements that stated that shooting must not occur in the direction of nearby residences or highways.

4. Other stipulations addressed disease issues involving escapement and the co-mingling of game farm elk and wild ones--things like making sure that perimeter fences are monitored at least one a week, like removing hazard trees within 30 feet of perimeter fences, like raising the height of perimeter fences when they run perpedicular to steep slopes.

5. These types of things were reasonable mitigation measures intended to mitigate serious concerns. If HB 473 would have been law when the state was making these decisions, Montanans and Montana's wildlife would not be protected by them now.

B. Habitat Security and hunting opportunities

1. Currently agencies often mitigate for important wildlife areas in their MEPA decision-making process. For example, the DNRC often includes mitigation measure in timber sales to conserve big game winter range, elk calving areas, waterfowl nesting sites, etc.

2. These mitigation measures are often vitally important for our big game populations. They are vital tools in conserving elk, deer, moose, and other big game in Montana. They are vital tools for maintaining Montana's long hunting season and ample hunting opportunities. They are vital tools for maintaining Montana's wildlife and tourism-based economy.

3. Once again, HB 473 would prevent the DNRC and other agencies to provide common sense mitigation measures meant to conserve Montana's wildlife and hunting heritage.

C. Conclusion

1. All in all, HB 473 drastically overshoots the mark. Please vote to table this bill. It is ripe with adverse consequences—for our wildlife, for our ranching economy, and for our tourism-related economy.

EXHIBIT 23
DATE 02/12/01
HB 473

25,

STATEMENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION IN OPPOSITION TO HB 473

FEBRUARY 12, 2001

GOOD AFTERNOON, MR. CHAIRMAN. I AM_____, AND I AM APPEARING HERE TODAY FOR THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION.

MR. CHAIRMAN, THE PRACTICAL EFFECT OF THIS BILL IS TO PREVENT AGENCIES FROM MAKING REASONED ANALYSES OF THE EFFECTS OF PROPOSED ACTIONS ON THE PHYSICAL AND HUMAN ENVIRONMENT IN COMPLIANCE WITH THE INTENT AND PHILOSOPHY OF MEPA. FURTHERMORE, THIS BILL WOULD HAVE THE EFFECT OF PLACING THE BURDEN OF SHOWING ADVERSE EFFECTS OF ACTIONS ON THE PUBLIC, WHICH IS THE ENTITY LEAST CAPABLE OF UNDERTAKING SUCH BURDENS. MR CHAIRMAN, THIS BILL SHOULD NOT BE FAVORABLY REPORTED.

MR. CHAIRMAN, WE THANK YOU FOR THIS OPPORTUNITY TO PROVIDE THESE COMMENTS TODAY.

EXHIBIT 24
DATE 2/12/01
HB 473

TESTIMONY FROM HOPE STEVENS

Little Falcon Farm

· HOPE B. (HOPIE) STEVENS • ROBERT T. (BOB) STEVENS, JR.

P.O. Box 1510, Helena, Montana 59624
Phone 406-442-9424
Fax 406-449-3668

1. I AM A MOTHER AND GRANDMOTHER AND I FEEL OWE WHAT I AM GOING TO SAY TO MY CHILDREN AND GRAND CHILDREN -!

WHEN I WAS ELEVEN OUR FAMILY: MY FATHER WHO WAS A WRITER, MY MOTHER & I AND MY TWO SISTERS HAD TO LEAVE FRANCE, OUR HOME THERE AND ALMOST EVERYTHING WE OWNED — WE HAD LIVED THERE EVER SINCE I WAS BORN IN 1927 - WE WERE DEFINITELY ALL AMERICAN CITIZENS! — WE HAD TO LEAVE BECAUSE OF A DICTATOR IN GERMANY WHO WAS DETERMINED TO TAKE OVER ALL OF EUROPE -- —

I MENTION THIS ONLY BECAUSE I am

Little Falcon Farm is located off the utility grid in rugged, mostly timbered foothills of the Rocky Mountain Front 20 miles NNW of Helena. If you plan to visit us, ask for driving instructions. If you plan to send us normal mail, overnight letters, or parcels, use the U.S. Postal Service, if possible. We stop by our P.O. box 2 or 3 times a week. If you must use UPS, FedEx, or other private carrier, ask us for an alternative address.

BEGINNG TO SEE SOME VERY DISTURBING (2)
TRENDS IN THIS STATE —

WHY ARE YOU TRYING TO DESTROY MEPA ?
WHY SHOULD THE PUBLIC NOT KNOW WHAT
SOME LARGE, OUT OF STATE, COMPANY
PLANS TO DO IN MONTANA? — SOME
BIG HEAVY HANDED CORPORATIONS SEEM TO HAVE
JOINTLY DECIDED WITH STATE GOVERNMENT THAT
THE MONTANA PUBLIC IS TOO STUPID TO KNOW
WHAT IS GOOD FOR THEM AND SO DECISIONS
WILL MORE AND MORE BE MADE FOR US
SECRETLY
, WHETHER WE LIKE IT OR NOT. —

THAT IS NOT ONLY TAKING AWAY OUR RIGHT
TO KNOW, BUT IN THE NOT TOO DISTANT
FUTURE, IF THIS SORT OF THING CONTINUES

Little Falcon Farm

HOPE B. (HOPIE) STEVENS • ROBERT T. (BOB) STEVENS, JR.

P.O. Box 1510, Helena, Montana 59624
Phone 406-442-9424
Fax 406-449-3668

(3) We could suddeny find that we will lose our right to speak our AT COMMITTEE HEARINGS like this one or to question what may be decided for us in any way!-

If there are to be no hearings on whatever industry is coming to the state and what this could mean to us. it can only mean there is must be something to hide from us. ——————

This is a situation all of us could regret someday.

My husband and I have been married 50 years now and we

Little Falcon Farm is located off the utility grid in rugged, mostly timbered foothills of the Rocky Mountain Front 20 miles NNW of Helena. If you plan to visit us, ask for driving instructions. If you plan to send us normal mail, overnight letters, or parcels, use the U.S. Postal Service, if possible. We stop by our P.O. box 2 or 3 times a week. If you must use UPS, FedEx, or other private carrier, ask us for an alternative address.

④ Have always found that if there is an important decision to be made in our lives it works out, by far the best, if we sit down and talk it over together before planning to go ahead - ! !

Please make certain that, as citizens of Montana and of this wonderful Country, we keep our right to know and our Freedom of Speech -

Thank you for your attention

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE_____

BILL NO. 473 SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Marilyn Brown	3219 1st Ave N Great Falls MT	Montana Bureau
P (O) I	Sandra Zeiler	2012 Gold Rush Helena	self
(P) O I	Gail Abercrombie	Helena	MT Petroleum Assn
(P) O I	Rita Windom	512 California Libby	Lincoln Co.
(P) O I	Michael Lynch	233 Thunderbolt Dr Kalispell	self
(P) O I	RON HARTMAN	P.O. BOX 39 WILSALL	SELF
(P) O I	Robert Lange	PO Box 334 Seeley Lake	Self
(P) O I	Janice Lange	PO Box 334 Seeley Lake MT	self
(P) O I	Sheila Keller	183 Fairmont Kalispell	self
(P) O I	Jack Mahon	124 N. Walnut Townsend	"
P (O) I	PAUL EDWARDS	630 MONROE	SELF
P (O) I	James D. Jensen	Box 1884 59624	MEIC
(P) O I	Lew BERRY	Helena	BNSF
(P) O I	Tim Ryan	P.O. Box 157 Libby, MT 59923	Lerop

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE_____

BILL NO. HB 73 SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Megan DeBruycker	Helena	self
P O I	WEBB BROWN	BOX 1730 HELENA	MT CHAMBER
P O I	GEORGE OCHENSKI	HELENA	CONF. SALISH & KOOTENAI TRIBE
P O I	JOHN SEMPLE	1645 A S-t Helena	MT CATTLEWOMEN & ASSOC of MT AERIAL APPLICATORS
P O I	M. S. KAKUK	HELENA	MT. CONSERVATORS
P O I	MARGARET MORGAN	HELENA	MONT. PETROLEUM MARKETERS
P O I	Steve Kelly	PO Box 4641 Bozeman MT 59772	Friends of the Wild Swan
P O I	Bob Ream	~~Bozeman~~ Helena	MT Dem. Party
P O I	Toby Day	913 So Black B Bozeman	self
P O I	Jerry Furtney	Po. Box 98 Townsend, MT	Self
P O I	Stan Frasier	BP 7584 Helena 59604	montana conservation voters
P O I			
P O I			
P O I			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE_____

BILL NO. 473 SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Michael Lynch	233 Threemile Dr. Kalispell	self
(P) O I	Steve Flynn	Box 384 Deerlodge	MT Self
(P) O I	PATRICK MATTERNAN	~~Box~~ Box 466	MCA
(P) O I	Jim Mockler	Helena	MT Coal Council
(P) O I	Angela Janacaro	Helena	MT Mining Assn.
P O I	Ted Hoffmann	Missoula	H+F Logging Inc.
P (O) I	Tracy Stone-Manning	Box 7593 MSO	Clark Fork Coalition
(P) O I	ELLEN GESTEST	HELENA	MT WOOD PRODUCTS
(P) O I	Lorna Karn	Bozeman	MT FARM BUREAU
P (O) I	DAVID DITTOFF	HELENA	MWF
P (O) I	Hal Harper	Helena	Self
(P) O I	Gary Marks	Clancy	Self
(P) O I	Darrell Schaaf	Whitehall	Self
(P) O I	Steven Schwab	Whitehall	Self

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE_____

BILL NO. 473 SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Joe Keller	183 Fairmont Kalispell MT	self
(P) O I	DENNIS M DAVAZ	463 OLD CLUBE PARK RD LIV.	self
(P) O I	Ed REGAN	P.O. Box 220 TOWNSEND, MT	RY TIMBER
(P) O I	Scott Mendenhall	PO Box 1079 Whitehall, MT	Jeff Local Dev. Corp
(P) O I	Donna Thornton	Box 1557 Kalispell, MT	Self
(P) O I	Dennis Thornton	Box 1557 Kalispell MT	Self
(P) O I	Chuck Samuelson	12 Pine Hills Ct. Kalispell MT	Self
(P) O I	Martin L Johnson	Box 624 whitehall MT	self
(P) O I	Tammy Johnson	Box 1008 Whitehall, MT	League of Rural Voters
(P) O I	Kim Liles	2 Columbine Rd Missoula, MT	Self
(P) O I	Don Serla	216 SENTINEL MSLA 59801	PPRC
(P) O I	Rudy Ketchum	208 E 2nd whitehall MT 59759	self.
(P) O I	ROGER HALVER	HELEN	MT ASSO. OF REALTORS
(P) O I	DAVE SKINNER	BOX 1436 WFSH	MFMU

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 02/12/01

BILL NO. 473 SPONSOR(S) [redacted]

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	BOB STEVENS	P.O. Box 510 HELENA	SELF
P O I	Joe Gutkoski	304 N. 18th Av. Bozeman MT 59715	Mont. River Action
P O I	Tom Crane	1027 4th Ave N Great Falls	self
P O I	Shannon Steffes	7528 Buckskin Dr Shepherd, MT	self
P O I	Rita Mandeville	512 Calif. Livingston MT	Lincoln Co.
P O I	Sherm Janke	415 N. 17th Bozeman 59715	SELF
P O I	MIKE COLLINS	BOX 5851 HELENA MT	SELF
P O I	Janet Ellis	Helena	MT Audubon
P O I	Joanne Bernard	Great Falls	MEIF
P O I	RONALD HARTMAN	P.O BOX 32 WILSALL	SELF
P O I	Paul Hawken	Melville 59055	NRC, CRC
P O I	[illegible]	315 Rose Butte Lot Forest	Self
P O I	[illegible]	165 Highland Rd Butte	Self
P O I	Paul Buckley	3006 Mammoth Butte	Self

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

P O I John Wilson Helena Mt. Trout Unlimited

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE_____

BILL NO. 473 SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Frank Crowley	307 Jad Helena	ASARCO
P O I	Bill LaCroix	249 McCarthy Dr Hamilton	BRD Growth Native Plants
P O I	Ronald Buentemeier	2225 Dillon Rd Columbia Falls, MT	F.H. Stoltze Land & Lbr and self
P O I	Bert Wolman	3016 Central Ave Gr. Falls MT 59401	Self
P O I	Al Kington	6412 Ga Meadow Dr Idaho	SCI
P O I	Dave Krueger	5100 Hwy 1 West Anaconda	
P O I	Jerry Furtney	P.O. Box 98 Townsend, MT 59644	Self
P O I	Tim Ryan	P.O. Box 157 Libby, MT 59923	Lorex, Inc.
P O I	Darrell Cooper	5200 Patty Rd Alberton MT	Darrell Cooper Logging
P O I	Jason Todhunter	PO Box 221 Harlowton, MT	Self
P O I	Leland Griffin	1401 Nob Ct. Great Falls	Montana Refining Co.
P O I	Dexter Busby	Great Falls	Montana Refining Co.
P O I	~~Sheila Keller~~	~~183 Fairmont Kalispell MT~~	~~Self~~
P O I	Barry Hovey	501 Sanders	MT Mining Council

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE_____

BILL NO. HB473 SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Carl Schweitzer	Helena	Bozeman Kalispell Ch of Commerce
(P) O I	Charles Brooks	Billings	Billings Chamber
(P) O I	Ed Eggleston	Libby	self
P (O) I	Arleen Boyd	Fishtail	self
P (O) I	Paul Hawks	Big Timber	Northern Plains Resource Council
(P) O I	John Bloomquist	Helena	Mt. Stockgrowers
P (O) I	Jeff Barber	Helena	MWF
(P) O I	Don Allen	Helena	CWEMA
(P) O I	Byron Robert	Helena	MT Bowhunters Assn
P (O) I	Steve Gilbert	Helena	self
(P) O I	John Youngberg	Helena	MT Farm Bureau
(P) O I	Gary Hegreberg	"	Wood Products Assn
(P) O I	Joyce Baker	Stanford	Farm Bureau
P O I	Sam Wilson	Helena	MT Trout Unlimited

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2/2/2007

BILL NO. 473 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Chuck Samuelson	127 Lake Hills Ct Bigfork MT	Self
(P) O I	Ed Eggleston	Libby	Self
(P) O I	Patrick M. Markham	P.O. Box 200	NMGA
P O I			
P O I			
P O I			
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

EXECUTIVE ACTION ON HB 473

{Tape : 2; Side : B; Approx. Time Counter : 58.6}

Motion: **REP. BROWN** moved that **HB 473 DO PASS.**

Motion: **REP. YOUNKIN** moved that the **AMENDMENT HB047301.alm BE ADOPTED.**

Discussion:

REP. YOUNKIN passed out the amendment **EXHIBIT(nah39a18)** and explained it.

Vote: Motion on the amendment HB047301.alm **carried unanimously.**

Motion: **REP. YOUNKIN** moved that **HB 473 DO PASS AS AMENDED.**

Discussion:

REP. YOUNKIN stated that she has been called several unspeakable names over this bill. She made it clear to the committee that she loves Montana as much as anybody else does and she does not have any intention of degrading the environment. She went over her intentions with the bill. The bill simply says that MEPA is our information gathering device and it is a procedure by which that information will be gathered before the state proceeds with permitting something. *{Tape : 3; Side : A; Approx. Time Counter : 0.1}* It is the job of the legislature, not the agencies, to make laws and policies.

Motion: **REP. GUTSCHE** moved that the **AMENDMENT HB047301.ate BE ADOPTED.**

Discussion:

REP. GUTSCHE passed out the amendment **EXHIBIT(nah39a19)** and explained it.

REP. YOUNKIN asked **Mr. Mitchell**, now that the bill has been amended, how does that relate to the remark in the fiscal note on SB 377. **Mr. Mitchell** stated the remark in the fiscal note implies that it may interfere with the State Land Board Commissioner's authority to manage School Trust Lands. The drafter of this amendment was **Michael Kakuk**, he may answer the question better. **REP. YOUNKIN** deferred the question to **Mr. Kakuk** and asked him, "Now that HB 473 has been amended to include the words, as described in The Enabling Act, etc., is there any

validity to the concerns of the remark #13 on the fiscal note for SB 377?" **Mr. Kakuk** stated, when he questioned the DNRC about #13 Monte Mason answered, by allowing these beneficiaries to make decisions on State Trust Lands there might be a constitutional problem. **Mr. Kakuk** stated, there is nothing in this bill that allows them to make those decisions. They can become more involved in the MEPA process, nothing in this bill takes any management powers away.

REP. YOUNKIN stated that she does not see **REP. GUTSCHE's** amendment as friendly. She would like to leave the language regarding State Trust Land in the bill. Sometimes the State Trust Lands are a project sponsor. It should be left clear that those State Trust Lands should have the same standing as a project sponsor.

REP. STORY stated that he would oppose the amendment. On page 3 of the bill in 4(b) it allows the project sponsor to ask the Board to conduct a review of a decision that was made by the department. This language would give the beneficiary some standing to go into the Board and take part in that proceeding.

REP. GUTSCHE stated, it does not matter who drafted this, it should be removed because we don't want State Trust Lands to even be considered as a project sponsor because they are governed under the Board of Land Commissioners.

REP. MOOD stated, the notion that the beneficiaries of the Trust should not have any input into how the Trust is managed is bogus.

Vote: Motion on the amendment HB047301.ate **failed 8-12 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting aye.**

REP. ERICKSON handed out two documents from Montana Audubon Society **EXHIBIT(nah39a20)** and **EXHIBIT(nah39a21)** and went over those documents. He asked **REP. YOUNKIN** to respond to the examples of needed acts and the gaps in current environmental laws.

REP. YOUNKIN stated, during the EQC study prospective gaps were not looked at. Proven gaps were looked at. The lists passed out are possible gaps not actual gaps. She referred the table on page 95 in the green MEPA book regarding agency responses.

REP. ERICKSON stated MEPA is now and always has been both substantive and procedural. He stated, we are on a wrong path with this.

REP. HARRIS stated, an analogy would be Montana's Nuisance Law. The nuisance law doesn't have any specific standards it just says if there is something that injures a person's right to quiet enjoyment of his or her property that can become a nuisance. It does not set any particular standards or address any particular problem. MEPA serves a very similar function which is, we don't know all of the problems out there, we don't know all of the ways in which the environment can be at risk, MEPA is how we do it.

REP. STORY stated, we have an act which creates a situation where anyone who thinks there is a problem can come forward and make a charge.

REP. MOOD spoke of a Supreme Court Case involving NEPA. The Court held that NEPA is a procedural act.

REP. WANZENRIED stated, this bill asks the legislature to take a leap of faith. It is clear that the sponsor has clear intentions but the policy is going to open up a pandora's box of problems. This is bad policy at the wrong time. He asked the committee to vote against the motion.

REP. BROWN stated, it is the job of the legislature to debate these issues.

Vote: Motion on the bill **carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.**

EXECUTIVE ACTION ON HB 513

{Tape : 3; Side : A; Approx. Time Counter : 25.4}

Motion: **REP. DALE** moved that **HB 513 DO PASS.**

Discussion:

REP. BROWN stated, there are some problems in Missoula but we should not blanket the State of Montana with this rule on nitrates because it is not warranted.

REP. STORY stated, Missoula has a different system than the rest of the state. They have a sole source aquifer. They also have a Water Quality District who can create and enforce their own laws. He gave an example of why this bill should pass.

REP. ERICKSON stated, it costs $12.90 to do this test. There may be something wrong with current law but this process goes overboard to fix a problem and it is too broad. The nitrates in

EXHIBIT 18
DATE 2-16-01
HB 473

Amendments to House Bill No. 473
1st Reading Copy

Requested by Representative Cindy Younkin

For the House Natural Resources Committee

Prepared by Larry Mitchell
February 16, 2001 (3:00PM)

1. Page 4, line 17.
Following: "each"
Insert: "institutional"
Following: "trust"
Insert: "as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328)"

- END -

EXHIBIT 19
DATE 2-16-01
HB 473

Amendments to House Bill No. 473
1st Reading Copy

Requested by Representative Gail Gutsche

For the House Natural Resources Committee

Prepared by Todd Everts
February 16, 2001 (3:04PM)

1. Page 4, line 16 through line 17.
Strike: "If" on line 16 through "trust." on line 17

- END -

EXHIBIT 20
DATE 2-16-01
HB 473

HB 473
Gaps in Current Environmental Laws

Asbestos - the is no air quality standard at the state or federal level for asbestos.

Wildlife Protection Act - there is no protection of wildlife calving areas, winter range, areas important for waterfowl protection, etc.

Forest Practices Act - there is no standard for timber sales except the Streamside Management Zone law that protects 50' on either side of a stream from clearcutting. State School Trust Lands will be prohibited from conditioning timber sales to do weed prevention, traffic safety, no mitigation for elk calving areas, no way to prohibit logging during spring break-up, no BMPs would be required on state timber sales.

Soils Protection - there is no act protecting activities from using best management practices (or avoiding) steep slopes or highly erosive soils unless the activity causes soils to go directly into a stream or lake.

Metal Mine Reclamation Act. No statute to protect communities against impacts on schools, police, fire protection, land use planning, etc. unless the mine has 75 or more employees. The Hard Rock Mining Impact Act applies to mines with 75 or more employees. No mitigation can be required to do traffic safety plans and other safety and transportation issues (hours of operation for schools, carpooling, etc.). No mitigation for sensitive wildlife areas (bighorn sheep ranges as protected by the Stillwater Mine).

Gravel Pits, Asphalt Plants, and Highway Projects - no controls can be placed on lighting, weed prevention, hours of operation, etc.

Fish, Wildlife & Parks Lands (parks, fishing access sites, wildlife management areas) - impacts to adjacent property owners will not be considered, weed prevention, there will be no requirements placed on what should be put into a management plan for these lands.

State Initiated Actions - no standards for timber sales, management of wildlife, state lands, etc.

Montana Water Use Act - requires that a permit be given for dewatering streams for highway projects, mines, etc. There can be no mitigation required if it looks like that activity will harm existing water rights.

EXHIBIT 21
DATE 2-16-01
HB 473

Examples of Needed Acts:

Asbestos Air Quality Standard

Wildlife Protection Act - there is no protection of wildlife calving areas, winter range, areas important for waterfowl protection, or other sensitive wildlife areas.

Forest Practice Act - to require steep erosive slopes to be avoided, seasons of operation to be specified (avoid spring break-up), weed prevention to be required, etc.

Community Traffic and Safety Act - to allow communities to be able to control hours of operation, traffic issues, school safety issues.

Weed Prevention Act - our current laws provide for weed control once weeds are established but does not address preventive measures for agencies to use/require in a permit/state action upfront.

State Parks and Fishing Access Site Siting Act - that protects adjacent property owners, and addresses weed prevention, and sets some standards for planning for these sites.

Alternative Livestock Operation Act - that addresses game farms that are operated like a feedlot.

Soils Protection - there is no act protecting activities from using best management practices (or avoiding) steep slopes or highly erosive soils unless the activity causes soils to go directly into a stream or lake.

Hard Rock Mining Impact Act - needs to be amended to include all major mines under the Metal Mines Reclamation Act so that community impacts on schools, police, fire prevention, infrastructure, etc. can be handled.

Open Cut Mine Reclamation Act (gravel pits) - needs to be amended to control lighting, weed prevention and hours of operation.

Montana Water Use Act - needs to be amended to require that a permit for dewatering streams for highway projects, mines, etc. can mitigate harms to existing water rights.

House of Representatives

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE Feb. 16, 2001 Bill NO. HB 473 NUMBER 1

MOTION: Amend HB047301.ate (REP. GUTSCHE)

NAME	AYE	NO
RICK DALE		✓
GAIL GUTSCHE	✓	
GILDA CLANCY		✓
LARRY CYR	✓	
KEITH BALES		✓
BILL EGGERS	✓	
LINDA HOLDEN		✓
BRETT TRAMELLI	✓	
RICK LAIBLE		✓
DOUGLAS MOOD		✓
DAVID WANZENRIED	✓	
JEFF LASZLOFFY		✓
RON ERICKSON	✓	
AUBYN A. CURTISS		✓
CHRISTOPHER HARRIS	✓	
ROD BITNEY		✓
DEE BROWN		✓
JOAN HURDLE	✓	
BOB STORY		✓
CINDY YOUNKIN		✓
	8	12

House of Representatives

Roll Call Vote

NATURAL RESOURCES COMMITTEE

DATE Feb 16, 2001 Bill NO. HB 473 NUMBER 1

MOTION: Do pass as amended

NAME	AYE	NO
RICK DALE	✓	
GAIL GUTSCHE		✓
GILDA CLANCY	✓	
LARRY CYR		✓
KEITH BALES	✓	
BILL EGGERS		✓
LINDA HOLDEN	✓	
BRETT TRAMELLI		✓
RICK LAIBLE	✓	
DOUGLAS MOOD	✓	
DAVID WANZENRIED		✓
JEFF LASZLOFFY	✓	
RON ERICKSON		✓
AUBYN A. CURTISS	✓	
CHRISTOPHER HARRIS		✓
ROD BITNEY	✓	
DEE BROWN	✓	
JOAN HURDLE		✓
BOB STORY	✓	
CINDY YOUNKIN	✓	
	12	8

HOUSE OF REPRESENTATIVES

ROLL CALL

NATURAL RESOURCES

DATE Feb. 16, 2001

NAME	PRESENT	ABSENT	EXCUSED
CINDY YOUNKIN	✓		
RICK DALE	✓		
GAIL GUTSCHE	✓		
GILDA CLANCY	✓		
LARRY CYR	✓		
KEITH BALES	✓		
BILL EGGERS	✓ 1/2		
LINDA HOLDEN	✓		
BRETT TRAMELLI	✓		
RICK LAIBLE	✓		
DOUGLAS MOOD	✓		
DAVID WANZENRIED	✓		
JEFF LASZLOFFY	✓		
RON ERICKSON	✓		
AUBYN A. CURTISS	✓		
CHRISTOPHER HARRIS	✓		
ROD BITNEY	✓		
DEE BROWN	✓		
JOAN HURDLE	✓		
BOB STORY	✓		
LARRY MITCHELL	✓		
HOLLY JORDAN	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Natural Resources** report that **House Bill 473** (first reading copy – white) **do pass as amended.**

Signed: _____
Representative Cindy Younkin, Chair

And, that such amendments read:

1. Page 4, line 17.
Following: "each"
Insert: "institutional"
Following: "trust"
Insert: "as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328)"

- END -

Committee Vote:
Yes 12, No 8.

410843SC.hdc

golf course pond, the result was a lengthy environmental study. He stated that lawsuits have created large excessive studies. The Montana economy has declined since 1965. He questioned if MEPA is the key to economic development in Montana then why has that trend not reversed in thirty years.

HEARING ON HB 473

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Proponents:
John Youngberg, MT Farm Bureau
Kim Liles, Pulp and Paper Workers
Don Serba, Pulp and Paper Workers
Ed Regan, RY Timber
Tammy Johnson, League of Rural Voters
Patrick Heffernan, MT Logging Association
Dave Skinner, Self
Cary Hegreberg, MT Wood Products Association
Russ Ritter, MT Resources and Open Pitt Mine
Ken Mesaros, Representing Himself
Pat Keim, BNSF
John Bloomquist, MT Stockgrowers
Ronald Buntemeier, F.H. Stoltz Land and Lumber Co.
Mike Murphy, MT Water Resources Association
Peggy Trenk, MT Association of Relators
Aiden Myhre, MT Chamber of Commerce
Gail Abercrombie, MT Petroleum Association
John Semple, MT Cattlewoman
Don Allen, WETA
Frank Crowley, ASARCO

Opponents:
Gayla Benefield, Self
John Wilson, MT Trout Unlimited
REP. MONICA LINDEEN, HD 7, Huntley
Janet Ellis, MT Audubon
Anne Hedges, MEIC
Hal Harper, Self
Jeff Barber, MT wildlife Federation, MT Chapter of the American Fisheries Society
Matt Clifford, Clark Fork Coalition
Jeanne Sugney, Self
Larry Campbell, Representing Himself
Sherm Janke, Self
Julia Page, NPRC
Richard Parks, Self
Matthew Leow, MT Public Interest Research Group

Bill LaCroy, Third Growth Native Plants
Jim Sweaney, Self
Wade Siskorski, Self
Steve Kelly, Friends of the Wild Swan
Mary Westwood, Self

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, declared that HB 473 will clarify that MEPA is procedural not substantive. It boils down to the question should MEPA dictate a result or dictate a process. She charged that the legislature rather than the agencies should make the policy. The legislature has not discussed the issue of procedural vs substantive since 1983. She stated MEPA was established to create harmony between humans and the environment. There must be conditions established in which humans and nature can coexist in productive harmony. She proclaimed that Montana cannot have beneficial uses to the exclusion of non-degradation and vice versa. She stated that those two areas must be balanced. She stated that if MEPA is substantive then the process dictates the agencies decisions and forces a particular action. It is not the right of the agency to make permitting laws. However, if MEPA is procedural, then MEPA itself does not dictate a certain result, but rather it is an information gathering process. As long as the decision maker is fully informed the decision maker can make an appropriate decision under the specific circumstances. She maintained that if specific areas in the environment require protection that are not already protected, it is the responsibility of the legislature to create those laws not agencies. She argued that the legislature has shirked it's responsibility by allowing the agencies to create those laws without any direction. That is not good policy. She stated that allowing the agencies to rely upon MEPA to provide the substantive environmental protections does not adequately protect the resource that may need protection. She added that there are no existing guidelines in MEPA to tell the agency how they should protect something. They establish guidelines without input from the legislature.

Proponents' Testimony:

John Youngberg, MT Farm Bureau, stated that if MEPA was meant to be substantive then there would have been no need for further environmental laws. He charged that nearly 150 laws and acts have been passed to fill in the gaps left by MEPA.

{Tape : 4; Side : A}
He urged the committee to change MEPA so that it would reflect the public awareness of the changing economy and environment.

Kim Liles, Pulp and Paper Workers, urged the committee to support the modernization of MEPA.

Don Serba, Pulp and Paper Workers, exclaimed his support for the bill in order to keep Montana families working.

Ed Regan, RY Timber, proclaimed that his company employs 400 individuals. Passage of the bill would settle the question of wether MEPA is substantive or procedural. He added that it would clarify that the legislature is responsible for policy making not the agency. He informed the committee that his helicopter operations were shut down by a MEPA lawsuit.

Tammy Johnson, League of Rural Voters, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas56a10).**

Patrick Heffernan, MT Logging Association, urged the committee to close the gaps left by MEPA. He claimed that the bill would solve the problems.

Dave Skinner, Representing himself, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas56a11).**

Cary Hegreberg, MT Wood Products Association, charged that MEPA has gone from a magnifying glass that studies potential environmental hazards to a hammer that stops projects in their tracks. He stated that the current attitude is if all else fails file a lawsuit. He stated that the current law is so nebulous and subjective that it provides legal vulnerability to projects. He declared that it is time to decide if MEPA is substantive or procedural. He urged the committee to get back to the real focus of MEPA.

Russ Ritter, MT Resources and Open Pitt Mine, handed out a copy of the Montana Resources production costs **EXHIBIT(nas56a12).** He stated that a new mine generation is needed in eastern Montana. He added that the coal there meets all air quality standards. He informed the committee that his company is willing to take risks in order to keep the mine working. He charged that passing this bill is a step in the right direction.

Opponents' Testimony:

Gayla Benefield, Representing herself, spoke in opposition to the bill and submitted written testimony **EXHIBIT(nas56a13).** (**Ms Benefield** spoke during the proponents testimony time because she had to leave.)

{Tape : 4; Side : B}

Proponents' Testimony:

Ken Mesaros, Representing himself, informed the committee that as a member of the MEPA interim subcommittee they reviewed MEPA at length, but failed to produce adequate recommendations. He stated that MEPA is a process for analyzing environmental impacts. It should not be used to stop or withhold a permit. He charged that it is important to decrease the levels of subjectivity.

Pat Keim, BNSF, stated that he is part of a group whose purpose is to attract industry to Montana. However, the task is difficult because industry does not want to come to Montana because it's policies do not encourage economic growth for a business. He declared that BNSF has lost $20 million dollars from shippers in Montana who have shut down. He proclaimed that is a threat to the number of employees BNSF can employ. He encouraged the committee to pass the bill in order to curtail shut downs across the state.

John Bloomquist, MT Stockgrowers, declared that MEPA is procedural; courts have upheld that decision. He stated that it is time to put sideboards on MEPA and clarify that it is procedural not substantive.

Ronald Buntemeier, F.H. Stoltz Land and Lumber Co., stated that he has worked under the conditions of MEPA in numerous cases. He added that it is important to clarify the law.

Mike Murphy, MT Water Resources Association, proclaimed that the bill is a reasonable clarification of the MEPA process.

Peggy Trenk, MT Relators Association, surmised that their membership understands what people value. She expressed that the bill does not change an individuals quality of life. If there are gaps she encouraged the legislature to solve those issues.

Aiden Myhre, MT Chamber of Commerce, expressed that the chamber supports the bill for three primary reasons; clarity, legislature should make decisions not agencies and MEPA is a procedural process.

Gail Abercrombie, MT Petroleum Association, stated that the association operates under MEPA and uses it as a procedural document. She charged that they follow the laws. If they operated in a subjective manner they could be accused of "takings".

John Semple, MT Cattlewoman, urged the committee to vote for clarity in MEPA.

Don Allen, WETA, also spoke for **Byron Roberts, MT Building Industry Association,** in support of the bill. He warned the committee not to listen to the rhetoric of the opposition. He contested the quote that good jobs are compatible with a good environment. He declared that MEPA is a good process, but it takes to long and costs to much money.

Frank Crowley, ASARCO, stated that MEPA is a good law as long as it is administered wisely. He charged that the main chunk of the law is in the regulations not the statutes.

Opponents' Testimony:

John Wilson, MT Trout Unlimited, handed out proposed amendments to fill in the gaps left by the bill and a memorandum by **REP. ERICKSON, HD 64, Missoula,EXHIBIT(nas56a14).** He refuted the comments that the bill does not weaken MEPA. He charged that making it procedural and not substantive is a bad idea. He warned that it is not a good idea to discontinue granting agencies the authority to condition a permit. He stated that the courts have recognized that MEPA is substantive. He questioned why MEPA cannot be both procedural and substantive. He charged that agencies have not used MEPA in a capricious manner. He stated that agencies have used it for safety. He warned that if the bill becomes law it creates new gaps in the ability to protect citizens. He speculated that for thirty years MEPA has been the substantive law used to fill in those gaps. He read aloud from the Erickson memo.

{Tape : 5; Side : A}

He discussed the first proposed amendment and charged that agencies should be allowed to condition a permit if public health or safety is at risk.

REP. MONICA LINDEEN, HD 7, Huntley, told the committee of a situation in her community where MEPA was crucial in solving a community problem. She read aloud and submitted a letter from **Steve Erb, President, Huntley Community Club,** that discussed the issue in detail **EXHIBIT(nas56a15).** She charged that without the MEPA process her community would have been in serious risk of health damage.

Janet Ellis, MT Audubon, charged that MEPA is both substantive and procedural. She declared that the legislation needs to accept the proposed amendments and pass the bill in order to

provide clarity. She stated that amendment number four would make it clear that on state initiated actions, when the agency is the applicant they would have more latitude.

Anne Hedges, MEIC, handed out a copy of NEPA and a section of the Code of Federal Regulations **EXHIBIT(nas56a16).** She refuted that individuals are using substantive and procedural in an incorrect manner. She stated that the problem is the bill would prohibit a particular result. She pointed out in several places where MEPA mirrors NEPA. She conceded that the courts have ruled that MEPA is procedural, but the ruling is not what the bill does. She stated that at that level an agency does not have to mitigate. She argued that the bill twists the content of the bill into something that it has never been at the federal level. She declared that the third amendment would make MEPA reflect NEPA. The amendment would establish that individuals cannot sue to stop a project and agencies will not be sued if they understand there is a problem and do nothing about it. She concluded her remarks by quoting Ward Shanahan's testimony given in 1983.

Hal Harper, Representing himself, hypothesized that it does not matter to the committee if MEPA is procedural and substantive. He stated that what matters is that reasonable impediments are not thrown in the way of job creation. He suggested that being forced to decide if the law is procedural or substantive is not the job of the legislature. He charged that the bill puts communities at risk. He stated that the bill weakens environmental protection; the gaps prove it. He warned that the legislature cannot deregulate the environment depending on the whims of the market place.

Jeff Barber, MT wildlife Federation, MT Chapter of the American Fisheries Society, charged that the bill creates a policy of no matter what you see leap anyway. He argued that the bill does not make common sense. He stated that the current process would be prohibited under the language. He alleged that there would be more EIS' at an increased cost. The bill would lead to more lawsuits and a lack of quality information. He maintained that MEPA is an information gathering document. Agencies must be allowed to do their job.

Matt Clifford, Clark Fork Coalition, stated that the bill goes beyond its intended purpose. He argued that the bill limits current powers that agencies have under substantive laws. He said the problem comes from the words, "clear showing and substantial likelihood." He stated that an environmental violation cannot be anticipated. It is important for the agencies to be able to ensure a sufficient margin of safety.

Jeanne Sugney, Representing herself, informed the committee that she spent seven years on the EQC. During that time she worked closely with individuals who had been affected by the Stillwater Mine.

{Tape : 5; Side : B}

She narrated that those individuals were able to mitigate and address those concerns. She gave other examples when mitigation was helpful in conveying public opinion. She asked the committee to consider what MEPA does for communities.

Larry Campbell, Representing himself, told the committee how he resigned his job because of concerns about asbestos in Hamilton. He charged that he is more concerned about human health than income. He questioned if the legislature was willing to do anything about issues like asbestos, instead of fixing things that are not broken like MEPA.

Sherm Janke, Representing himself, expressed his concerns for the gaps in the bill. He accused the legislature of generating more gaps by passing legislation such as the Major Facilities Siting Act.

Julia Page, NPRC, informed the committee that the bill is a step backwards; away from common sense actions by agencies that would protect people and communities from obvious project impacts. She stated that mitigation has helped projects acquire their permits and move forward. She warned that communities would be harmed without the ability to mitigate. She charged that MEPA is not an erroneous project-killing provision.

Richard Parks, Representing himself, declared that MEPA has numerous good points. He gave an example of the Mineral Hill Mine. He depicted that the MEPA process was used and the mine was opened. Now the mine will be closing, but with no harm to the environment. He charged that MEPA documents are important in allowing the public and agencies to make a good decision. He questioned if the agency cannot enforce a permit, can it enforce anything.

Matthew Leow, MT Public Interest Research Group, urged the committee not to vote for the bill based on fear, but on rationality. He warned that the bill would tie the hands of the agencies, which would compromise the protection of the environment and human health.

Bill LaCroy, Third Growth Native Plants, provided the committee with an example of a weed law document. He also urged the

committee not to listen to inflammatory comments made by other proponents.

Jim Sweaney, Representing himself, stated that even though the Gardner Mine closed people are still working. He charged that without MEPA jobs would not exist.

Wade Siskorski, Representing himself, declared that he was opposed to the bill because it decreases public participation in decisions that deeply affect their lives.

Steve Kelly, Friends of the Wild Swan, charged that the bill takes away the ability of the agency to plan. He stated that projects will no longer be monitored.

John Wilson, MT Trout Unlimited, summarized that the gaps in the bill are narrow. He highlighted endangerment of public health, safety, welfare, and harm to wildlife resources.

Mary Westwood, Representing herself, stated that MEPA is an important public policy. She cautioned the committee against making hasty decisions. She claimed that small businesses benefit from MEPA. She proclaimed that dialogue needs to be opened up in Montana. She stated that the bill allows new science to be immediately applied to a project. She expressed her concern for contract law, and professed that a screwdriver would be a better way to describe MEPA, because it allows you to tinker and make things better.

{Tape : 6; Side : A}

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked if **Ms Hedges** would be supportive of the bill if it were amended with the proposed amendments by the opposition. She said yes she would. **SEN. COCCHIARELLA** asked if she would inform the press of her support and send out mailers. **Ms Hedges** stated that she would.

SEN. TOOLE questioned the concern about clear showing and substantial likelihood on page 3, line 23-25 of the bill. He asked if the language would tie agencies hands. **REP. YOUNKIN** told him that the underlying substantive law is for that purpose. If the underlying substantive law is going to be violated it has to be conditioned. **SEN. TOOLE** wondered what would happen if it is not clear. He stated that according to his understanding agencies that use MEPA monitor it for a while and then revisit it. He questioned if the tool for evaluating environmental concern would be eliminated under the bill. **REP. YOUNKIN** charged

that there is nothing in the bill that eliminates the agencies ability to monitor an application after it has been granted. She stated that there is nothing that limits the ability to monitor a situation and then impose a condition later. **SEN. TOOLE** read aloud from the first line of the bill and charged that the agency would not have that right. **REP. YOUNKIN** disagreed. **SEN. TOOLE** asked if she would resist the first amendment proposed by the opposition. **REP. YOUNKIN** charged that such policies like the Water Quality Act and others do what the amendment is proposing. She stated that if there is an infraction of those acts, then they must be enforced. She proclaimed that if the agency does not have the authority to make laws, then they are making laws without any basis or guidance from the legislature. She argued that the agency is not the policy maker. **SEN. TOOLE** asked if the provisions on page two of exhibit 14 should not be a part of the permitting process. **REP. YOUNKIN** declared that many of the things listed are already covered in the law. She offered the example of asbestos guidelines. **SEN. TOOLE** inquired if she wanted state agencies in a position where once they've identified a risk under MEPA analysis, they would not be allowed to do anything substantive about it. **REP. YOUNKIN** stressed once again that if a risk is identified there are other places in law where the agency can deal with that. **SEN. TOOLE** questioned if she would object to the agency going to the county and stating that there is a problem. **REP. YOUNKIN** said she did not object to the local government regulating that situation. **SEN. TOOLE** wondered why the legislature would put the state agency in a position where they can identify a risk but not do anything about it. He questioned again if she would agree to the first amendment (exhibit 14). **REP. YOUNKIN** said she did not want the amendment because it requires that MEPA be used substantively. **SEN. TOOLE** questioned why she is carrying the bill if it requires an agency to do what she doesn't want them to do. **REP. YOUNKIN** stated she is bringing the bill because of the direction the agencies are finding themselves moving, and the position they are finding themselves in. It is not the agencies job to do what the legislature has failed to do. It puts the agency in the position of making the law rather than implementing it. **SEN. TOOLE** inquired about the questions raised about MEPA and NEPA mitigation. **REP. YOUNKIN** charged that doing a direct comparison of MEPA and NEPA is not fair and accurate. There are numerous federal regulations that go along with it. If an agency is allowed, but not required to implement MEPA substantively the state would be sued for being arbitrary and capricious for not establishing requirements. There needs to be additional laws to back up existing laws.

SEN. TASH asked **REP. YOUNKIN** if she had a problem with the other proposed amendments. She stated that passing all of the

amendments would result in an internal contradiction in the law. She stated that the law needs to be one way or the other. The law needs to be substantive or procedural.

Closing by Sponsor:

REP. YOUNKIN argued that agencies need direction in MEPA. They spend too much time trying to figure out what they can and cannot do. The legislature needs to give agencies direction and take them out of the policy making decisions. She charged that laws force agencies to fill in the gaps, sometimes against their will. She informed the committee that Mr. Janke in the House hearing questioned why she would be carrying the bill because she did not have a mine in her district and she never would. She stated that she has numerous students in her district. This may be the one thing that could help Montana recover from its economic hardships. She stressed that other states in the west do not have a MEPA equivalent and it is no coincidence that these states are able to fund their universities. She wondered if the environmental policy laws have something to do with the lack of economic growth in the state. She stated that it was a recommendation by the EQC that the legislatures do the right thing and decide who will make the law. The legislatures are the policy makers and the ones who are accountable to the taxpayers and voters.

The following exhibits were handed in at the end of the hearing:

Rick Jordan, Representing himself, submitted written testimony in opposition to the bill **EXHIBIT(nas56a17).**

SEN. JOHN COBB, SD 25, Augusta, submitted his concerns with HB 459 **EXHIBIT(nas56a18).**

Billings Chamber of Commerce, comments on HB 473 **EXHIBIT(nas56a19).**

ADJOURNMENT

Adjournment: 8:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT(nas56aad)

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 3/12/01
BILL NO. HB 473

The League of Rural Voters, Inc.

Testimony of Tammy Johnson, League of Rural Voters
Before the Senate Natural Resource Committee on March 12, 2001
On HB 473

Mr. Chairman, Members of the Committee, Representative Younkin, thank you for the opportunity to appear before you today.

The debate over MEPA, its intentions and the way in which it is implemented has been raging for some time. Since the 1971 passage of The Montana Environmental Policy Act, the Legislature has struggled to achieve consensus on many MEPA issues. The ongoing rhetoric about the sacred quality of MEPA would lead one to believe that this is the first legislature that ever sought to make changes to the law. Indeed, MEPA did originally pass with only one dissenting vote. However, that picture is incredibly incomplete. In fact, the same year that MEPA was enacted, funding for implementation via the EQC originally failed and then finally, only partial funding was appropriated. Only four years after its passage, there was legislation to completely repeal MEPA. In MEPA's history, 51 pieces of legislation have been introduced that attempted to modify or study MEPA. The legislature has tended to make incremental changes over the years, amending MEPA 24 times. It is clear that the MEPA or more than likely, the implementation of MEPA has always been controversial and that situations have arisen during the past 30 years requiring changes to the law.

Representative Younkin's bill is also not the first one that has attempted to clarify whether or not MEPA is substantive or procedural. In fact, five pieces of legislation have been introduced related to this very issue. In 1977, then Governor Tom Judge offered two opposing legislative proposals. One, which clarified that MEPA was procedural and one that clarified MEPA, was substantive. Both bills failed. In 1979 similar versions were introduced again and again, both measures failed. In 1983, a resolution to study the issue of substantive versus procedural was introduced and it failed. In 1999, the Legislature did pass a resolution to study MEPA but yet again, no conclusions were drawn on the most contentious issues.

What has really happened throughout the years is a failure on the part of the legislature and a failure on the part of study commissions. Simply because something is difficult and consensus is unable to be reached, does not absolve our lawmaking body of the responsibility it is charged with.

The inability and unwillingness to firmly grapple with this debate and reach a decision has produced some adverse consequences for this state and for the people and places that our members call home. Not only has successive legislative bodies been unable to clearly articulate MEPA's purpose, our Environmental Quality Council, our state agencies charged with the implementation of MEPA and our courts have all been left to making interpretations, contradicting themselves and their actions and ultimately creating

a litigious situation where no one and nothing has benefited, except for a handful of attorney's who litigate MEPA cases.

As an example of the disarray amongst various entities, the Department of Environmental Quality and Fish, Wildlife and Parks both say that they implement MEPA both substantively and procedurally. The Department of Natural Resources and Conservation and the Montana Department of Transportation strictly implement MEPA procedurally. The courts have gone back and forth on this issue like a ping pong balls, sometimes making definitive statements such as Judge Sherlock stating "This court notes that the whole purpose of the Montana Environmental Protection [sic] Act is procedural. It is not to dictate a certain result." Judge Honzel noted that "The Montana Supreme Court has held that MEPA is procedural, not substantive." Judge Honzel in a separate case stated again that "MEPA is a procedural statue designed to ensure that the decision makers and the public are fully apprised of the environmental consequences of government actions before public resources are committed to those actions."

On the other side of the fence Judge Bennett determined that MEPA was substantive under the Metal Mines Reclamation Act and in 1993, Judge Sherlock seemingly contradicted himself by drawing a conclusion that essentially made MEPA substantive.

Well folks, it is time to make the decision. This issue has been waiting a long time for resolution. Previous legislatures have shirked their duties but to your great credit, the 57th Montana legislative body is not running away from its duties. You should be commended, not disparaged, for having taken up this subject and for having reached the halfway point with this very necessary clarification.

Your choice is clear here. You can make the decision that MEPA is procedural by reporting this bill out of this committee and passing it on the floor of the Senate. If indeed you believe that MEPA is substantive, then be bold enough to say so, quit trying to have your cake and eat it too and make it so. The one thing you should not do is to allow this all too important issue to go unresolved yet again. After 30 years of debate, the time has long since passed to make a decision. I hope you will give HB 473 a do pass recommendation, for our families and for our environment.

Thank you for the opportunity to present this testimony.

Tammy Johnson
Vice President, League of Rural Voters
P.O. Box 1008
Whitehall, MT 59759

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 3/12/01
BILL NO. HB 473

My name is Dave Skinner, I live in Whitefish.

I was down here in favor of MEPA reforms before transmittal. I'd like to restate my support for these reforms, and express my thanks to those of you trying to do the right thing.

Something really struck me last trip -- the obvious sartorial and grooming parity among the lobbyists got me to thinking: We all know about corporations, but what of immigrant lobbyists who get THEIR paychecks from rich out of state foundations? Thank goodness for the Internet.

I won't name names -- instead, I suggest you simply watch the audience and see who turns red. These folks don't get their money from the Montana public, but from rich out of state foundations, like the Brainerd and Bullit foundations out of Seattle, El Salvador sweatshop lady Liz Claiborne's New York foundation, and of course, the good old Turner Foundation.

Ted Turner...45 grand one year, 60 grand the next. Here's a guy who USED to own the biggest TV station ever, making a killing selling ads to get people to consume resources, while he throws money at groups trying to stop resource production?

I'll tell you how important this out of state money really is for these people. Their form 990 lists "other revenues:" A slide show was good for $180, and a solar home tour raked in 85 bucks.

In the back pages of the 990, this outfit claims it spent 181,000 in 1999 "assisting individuals and nonprofit organizations to address environmental problems of concern to them," including unspecified direct "grants and allocations" of $56,400. Smells like money laundering to me, as does the 77 grand spent on "consultants."

"Monitoring and influencing the decisions and activities" of government was good for 142 grand.

And this group has a want ad in High Country News...recruiting for a development director, 25, 35 grand plus benefits? What's the average wage in Montana these days -- MINUS benefits? About 22 grand, last or second to last in the nation?

A half-million-dollar budget for a staff of seven. Not bad. How much of it was membership dues? According to their IRS form 990 page 6, big fat, stinking ZERO! Public support, my derriere!

Fact is, if Ted Turner and his rich meddler cronies stopped supporting this group, it, like most other environmental groups in this state, would simply cease to exist.

Like most REAL Montanans, I'm sick to death of being caught in the middle, sick of being ignored while rich social engineers toy with our most precious possession -- our future.

I'd like to request that you pass these reforms for the Governor's signature. Putting deadlines and performance standards into the MEPA process will allow Montanas to move toward our future -- rather than sit here and watch it fade away behind a smokescreen of lawsuits and spin -- written, bought and paid for by out of state foundations.

Thank you for hearing me out.

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 3/12/01
BILL NO. HB 473

MONTANA RESOURCES
Information re: Electricity Usage, Costs and Economic Impacts

ELECTRICITY USAGE AND COSTS

1999 Electricity Usage	
Total energy used (MWh)	359,460
Average load (MW)	41.03
1999 Electricity Costs	
Energy	$9,578,562
Transmission	$1,660,866
Distribution	$1,108,628
Total Electricity Costs	$12,348,056
Electricity Cost/MWh	$34.35

ECONOMIC PROFILE AND IMPACTS

	1999	July 1986 - June 2000
Employees and payroll:		
# of employees	328	N/A
Total payroll	$11,327,636	$182,421,932
Average wages per employee	$34,535	$39,769
Purchases:		
Butte-Silverbow	$10,985,904	$222,914,794
Montana	$12,035,899	$72,653,259
Subtotal - In-state purchases	$23,021,803	$295,568,053
Out-of-state	$17,236,656	$233,847,059
Total purchases	$40,258,459	$529,415,112
Taxes - by type:		
Property taxes	$1,323,089	$23,655,579
Metals mines tax	$953,268	$26,181,715
Gross proceeds tax	$973,141	$20,531,058
Unemployment	$45,007	$1,237,773
FICA (company and employee)	$1,686,604	$27,135,788
Income tax (company and employee)	$1,797,618	$127,424,618
Total taxes by type	$6,778,727	$226,166,529
Taxes - by recipient:		
County	$2,534,547	$49,988,552
State	$1,192,520	$49,553,940
Federal	$3,051,660	$126,624,037
Total taxes by recipient	$6,778,727	$226,166,529

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 3/12/01
BILL NO. HB 473

My name is Gayla Benefield and I grew up in Libby, Montana..I want to tell you that I resisted change in the early 70's when the government was forcing environmental policy upon us. My family roots embraced mining and also ranching. The community that I grew up in centered around the timber industry. ..I had faith in the integrity of the corporations that were mining our ore and signing my father's paychecks...I had faith in the lumber companies that were logging our timber, I strongly felt that the government was trying to force rules upon us, which were not necessary.

I was wrong...DEAD WRONG! I didn't comprehend that Corporations would put a dollar value on human life and that the dollar would win. What I and many others in our state didn't realize was that we would ultimately end up with what has been referred to as the worst environmental and occupational disaster of the 20th century.

What I didn't realize in 1971 was that the environmental policies didn't need to be abolished, but needed stronger teeth to enforce the issues. If a comprehensive MEPA analysis had been completed for our vermiculite mine in 1971, the state could have required numerous mitigation measures be put in place to protect the residents of our community

In 1970,I was wrong...DEAD WRONG ...during the next 20 years; I relaxed my stance towards Environmental Policies. I began to feel comfortable in the knowledge that someone was taking care of us; someone was watching out for our best interests...I was DEAD WRONG again.

Now, the government feels competent to step in again. To tweak our fragile laws already in place to make Montana a place where industry will feel welcome.

We are living and gasping proof that Montana and Libby have been played for fools by corporate dollars .In Libby, we recently completed the first of 25 years of screening for asbestos related disease. 6500 people were screened.. Preliminary results from the largest medical screening, ever undertaken in the world show that up to 30% of those participating are showing symptoms synonymous with asbestos related disease. One victim is too many, 1000 victims could be considered Industrial Homicide.

Our mine in Libby has closed its doors, but the carnage that it caused will be felt in the hearts and lungs of the residents of our community and across the

United States for years to come, but typically, in Montana, when one door shuts, another opens.

In the vermiculite mine at Dillon, Montana traces of tremolite asbestos fiber were found. Under current policies, the state would have the authority to put in place mitigation measures to protect miners and surrounding residents. Under SB 473 the state would not be allowed to require those protective measures, leaving workers and residents at risk. . Because the tremolite fiber that is killing so many Libby residents was not a mined substance, once it left the mine site, attached to the worker's clothes and cars, attached to the mine tailings that were used to construct the school running tracks, it was not governed nor inspected. Because the two most toxic sites that are being examined and slowly cleaned up were outside the EPA's boundaries, a ruthless corporation was legally able to spew toxic dust on the children of the community who played children's games on the ball fields.

I ask you, do you feel competent to assume the responsibility of someone's life by changing the laws to suit industry in Montana? Years ago, decisions were made, we in Libby are proof. We cannot change the past, we must live with the present, but we CAN change the future. Let us keep the integrity of Montana by keeping our doors open to industry, but let us lay down solid ground rules before industry comes in so history and horror will not repeat itself in another decade.

The choice is yours.

The following exhibit
exceeds 10 pages.

Exhibit: 14
3·12·61
HB 473

The complete exhibit is located with the minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena, Mt 59620-1202
(406) 444-4775

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 3/12/01
BILL NO. HB 473

Huntley Community Club
Steven M. Erb, President
PO Box 101, Huntley, MT 59037
406-348-3888

3/9/2001

Dear Members of the Senate Natural Resources Committee,

I Thank You for taking time to allow me to voice our concerns. My name is Steve Erb. I am a life long resident of the community of Huntley, MT. Currently, and for the past ten years, I have had the honor and pleasure to serve as President of the Huntley Community Club, (HCC). The HCC's main objective is to maintain and preserve Barkemeyer Park in Huntley. However, occasionally our club has been faced with other issues which we felt our involvement in might benefit the community.

We wish to express our sincere opposition to HB 473. We are opposed to, "A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT ACTIONS TAKEN UNDER THE MONTANA ENVIRONMENTAL POLICY ACT MAY NOT BE CONDITIONED BEYOND STATUTORY REQUIREMENTS...", more specifically page 3, Section (4) (a), lines 22-25, "The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on any environmental review without a clear showing that granting a permit or other authority to act, or that granting the permit or authority to act without imposing conditions, would create a substantial likelihood that a violation of a statutory or regulatory requirement would occur."

Many concerns surfaced when our community (Huntley), was faced with the prospect of having coal hauled from the Bull Mountains Mine, near Roundup, to a temporary loadout facility in Huntley, by Meridian Minerals Company, (MMC). Our major concerns were, 1) The haul route included Heath Street (a residential street) in Huntley. 2) Increased truck traffic during school bus travel hours. 3) Responsibility for road improvements and/or repairs. 4) The following seven concerns were extremely valid due to the fact that the loadout facility was in such close proximity to the town site itself, a) Dust control, b) Noise control, c) Hours of Operation, d) Duration of time the Huntley loadout would be permitted for, e) Area needed, including any future expansion of the Huntley loadout, f) Working fire protection plan, and g) Air quality monitors. As controversial as the issue was, the HCC remained determined to have our concerns heard, and in an effort to be part of the solution, offered numerous mitigation proposals.

Mitigation played a huge part in this extremely sensitive matter. Throughout the process, the HCC and MMC came to understand, "where the other side was coming from and why". Hopefully, each of you has received a copy of an excerpt from a letter written by Jan Sensibaugh to Rep. Ron Erickson. From that letter, " Finally, when the Department in 1992 issued the permit authorizing the Meridian Minerals Company to mine coal in the Bull Mountains, the Department placed stipulations on the permit pursuant to MEPA. The stipulations were designed to mitigate impacts to the hauling of coal from the mine to a temporary loadout facility along the railroad tracks at Huntley. Huntley is located 41 miles from the mine site." Those stipulations, including the ones mentioned at the end of the excerpt are the direct result of mitigation. May I point out that according to the text of the excerpt that," In April of 1993, the Department added two stipulations at the request of Meridian Minerals." By having the chance to sit down together, the HCC and MMC were able to reach a compromise. The HCC felt we made a difference and MMC was allowed to go forth with their project. Concessions were made by both parties!

The process for mitigating problems can be compared to a "Good Neighbor Policy". As human beings, each of us has a tolerance level for resistance to others endeavors, whatever they may be. Sometimes until we face our adversaries, we don't fully understand the impact of those endeavors. Mitigation allows for an exchange of ideas which lead to a "Good Neighbor Policy" on the part of industry and community.

In closing, please consider this; **Are you ready to sacrifice at any cost our quality of life because you are willing to let anybody do what they want to satisfy their own end, without community involvement. OR, would we be better off examining all aspects of our actions, both pro and con, while attempting to compromise so that all involved get a win win situation!**

Thank You for your time!
Sincerely,

Steven M. Erb

Steven M. Erb
Resident of Huntley, MT
President, Huntley Community Club

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 3/12/01
BILL NO. HB 473

[Code of Federal Regulations]
[Title 40, Volume 24, Parts 790 to END]
[Revised as of July 1, 1999]
From the U.S. Government Printing Office via GPO Access
[CITE: 40CFR1508.20]

[Page 373-374]

TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER V--COUNCIL ON ENVIRONMENTAL QUALITY

PART 1508--TERMINOLOGY AND INDEX--Table of Contents

Sec. 1508.20 Mitigation.

Mitigation includes:
(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

[[Page 374]]

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

Office of Federal Activities

National Environmental Policy Act

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333]. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334]. Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335]. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341]. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342]. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344]. It shall be the duty and function of the Council --

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Return to Office of Federal Activities

SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 3/12/01
BILL NO. HB 473

TESTIMONY SUPPORTING

REPRESENTITIVE YOUNKIN HOUSE BILL 473

RICK S. JORDAN

2425 HARVARD

BUTTE, MT 59701

Mr. Chairman, Members of the Committee, Representative Younkin

My name is Rick Jordan and I am Mill Superintendent at the Golden Sunlight Mine. I strongly support House Bill 473. The Montana Environmental Policy Act (MEPA) was designed to create balance between industry and the environment. However, MEPA can also be used as a tool by special interest groups to thwart any and all natural resource-related projects. This bill will clarify MEPA's original intent.

Our regulatory agencies are made up of extremely capable scientists and engineers trained to study facts and data necessary in determining potential detrimental effects of proposed projects. Unfortunately, the permitting process has become so difficult and drawn out that obtaining an operating permit can take decades. This is illustrated by the following example:

Golden Sunlight was granted an operating permit for expansion after completing an environmental assessment (EA) in 1992. Several environmental organizations immediately challenged the permit by suing State regulatory agencies and Golden Sunlight. Even though regulatory agency personnel agreed with the Golden Sunlight operating plan and were satisfied with data presented in the EA, a Montana judge ruled that an environmental impact study (EIS) must be completed before a permit could be legally granted. The operating permit delay necessitated modifying Golden Sunlight's waste hauling schedule, thus increasing operating costs by over $1,200,000.

A draft EIS was published in November 1997 and the final document was completed in April 1998. During the public comment period, 289 written and oral comments were received in favor of the Golden Sunlight operating plan. Additional support included a petition containing 1,340 signatures. Only three opposing comments were received. The permit was not granted, however, until July 1998 as regulatory agencies took extra time in studying the document to make sure that there were not grounds for additional law suits. None-the-less, within 90 days the environmental organizations filed to continue the law suit.

Opponents of legislation designed to clarify MEPA argue that "only" 27 lawsuits have been filed since MEPA was enacted in 1971. The Golden Sunlight lawsuit is just one of those 27 lawsuits and has been ongoing since 1992.

Today's investor market is extremely competitive and investors expect a timely return on their investments. Montana's legacy of lengthy permitting studies does not encourage new business development by those industries that traditionally pay high salaries and offer decent benefit packages.

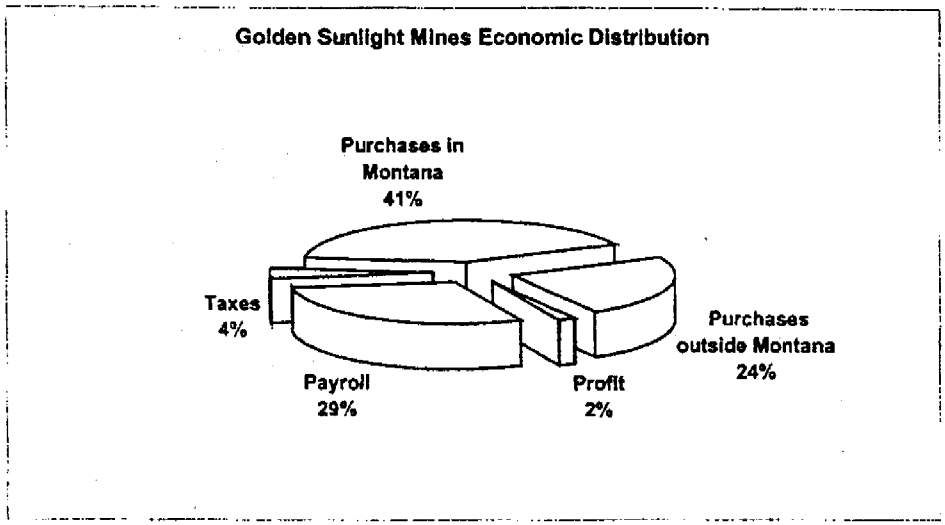
Should the permitting process, then, be only a token exercise with permits granted to all applicants? Certainly not. If MEPA is used as intended by it's authors, only those projects deemed suitable by Montana's regulatory agencies will be permitted. Laws already in place will guarantee environmental protection. Operators unwilling or unable to abide by those laws must be punished just as any other law breaker is punished.

Responsible operators will strive to use the latest and most effective feasible technologies to ensure the greatest means of environmental protection. As an example, in 1998, Golden Sunlight installed a cyanide destruction circuit requiring a capital outlay in excess of $2,400,000 and annual operating costs in the range of $595,000. This installation was not mandated by any State regulation. However, Golden Sunlight chose to install the circuit because the technology was proven effective and provided yet another means of guarding against adverse environmental impact.

Finally, I would like to comment on a statement included in a recent guest editorial written by one of Butte's representatives and published in the Montana Standard. This statement represents a common argument in the fight against the extractive industries. The representative wrote, "*Throughout Montana's first century, our Legislature sat back while the large, extractive industries exploited our natural resources. Most of the money left the state, while Montana citizens remained behind to pick up the pieces.*"

Although I question the fact that most of the money left the state, I do not have data to disprove that claim. I do, however, have economic data from the Golden Sunlight Mine. Golden Sunlight began operating in 1983. Since that time, Golden Sunlight has purchased $270,299,877 in goods and services from Montana suppliers and $154,446,899

in goods and services from suppliers outside of Montana[1]. Golden Sunlight has paid its employees a total of $192,635,231 in wages and benefits. Suppliers and employees pay taxes. Golden Sunlight has paid taxes totaling $25,068,219. Yet profit realized by Placer Dome, Golden Sunlight's parent company, has totaled only $10,945,000 since 1983. In other words, Golden Sunlight has given the government 2.3 times what it has returned to the parent company. Economic distribution is presented graphically below.



The Butte representative failed to mention the countless number of doctors, lawyers, engineers, school teachers, or other professional people who received their education with mining dollars. He also did not discuss the hundreds of thousands of meals put on the tables of miners and their families. He did not credit Montana's mining industry with helping to develop the greatest industrial power that this world has ever known. And finally, he made no reference to the fact that Montana's mines provided many of the natural resources needed to defeat axis powers during two World Wars.

We live in the most pampered society in history. So pampered, in fact, that we place higher priority on our recreation than on ensuring that our children have the opportunity to hold decent jobs and live in the state of their choice.

Montanans want higher paying jobs. Those jobs come from industry. However, industry is convinced that Montana is closed to business. House bill 473 is a step toward changing that attitude.

Rick S. Jordan
2425 Harvard
Butte, MT 59701

[1] Data pertaining to money paid for goods and services prior to and including 1990 was unavailable. Thus, average annual outlays for those years were calculated as a function of payroll costs.

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 3/12/01
BILL NO. HB 473

BILLINGS AREA CHAMBER OF COMMERCE

HB 473: Clarify the Actions Taken Under MEPA May Not Be Conditioned Beyond Statutory Requirements

Issue

Should the Chamber support or oppose Representative Younkin's bill to clarify the actions taken under MEPA may not be conditioned beyond statutory requirements?

Importance to the Chamber

HB 473, sponsored by Representative Younkin is "an act clarifying that actions taken under the Montana Environmental Policy Act may not be conditioned beyond statutory requirements; providing definitions; amending Section 75-1-201, MCA; and providing an immediate effective date."

The arguments for/against this bill?

Pros:

HB 473 is one in a series of bills that attempts to streamline the Montana Environmental Protection Act to make it more business friendly. This bill attempts to accomplish the goal by addressing the statutory requirement issue. Specifically, the bill provides that:

- **An agency may not withhold, deny, or impose conditions on any permit or other authority to act based on any environmental review without a clear showing that granting a permit or other authority to act, or that granting the permit or authority to act without imposing conditions, would create a substantial likelihood that a violation of a statutory or regulatory requirement would occur.**
- **A project sponsor may request the appropriate board, if any, conduct a review. This board may submit an advisory recommendation to the agency regarding the issue.**

Cons:

Environmental groups such as the ~~High~~ Northern Plains Resource Council are opposing this bill because they believe it will significantly weaken the MEPA. Additionally, they argue that if this bill, and legislation like it are enacted; it will set a president for further erosion of this act.

Conclusion

The committee has reviewed this bill and compared it to the Philosophy Papers, weighed the pros and cons, consulted with Charles Brooks and compared it to past positions of the Chamber. The Legislative Affairs Committee has opted to support this bill because it attempts to bring balance to the issue of the environment. The bill will not significantly change the MEPA, but it will allow businesses with an opportunity for input.

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 03/12/01

NAME	PRESENT	ABSENT	EXCUSED
SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	X		
SEN. DALE MAHLUM, VICE CHAIRMAN	X		
SEN. VICKI COCCHIARELLA	X		
SEN. MACK COLE	X		
SEN. LORENTS GROSFIELD	X		
SEN. BEA MCCARTHY	X		
SEN. KEN MILLER	X		
SEN. GLENN ROUSH	X		
SEN. BILL TASH	X		
SEN. MIKE TAYLOR	X		
SEN. KEN TOOLE	X		

DATE 3/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 459, HB 473
HB 477

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Kim Liles		Pulp & Paper Workers	459 473 477	X	
Pam Langley	449-7391	MT Agricultural Business Assn	459 473 477	X	
Ken Mesaros	866-3318	Self	459 473 477	X	
Kim Kafka	395-4556	Self	477	X	
Russ Ritter	4496570	Wash Corp	459 473-77	X	
Bob Gilbert	439-1839	MT Petroleum Marketers	459 473	X	
John Wilson	449-9933	MT Trout Unlimited	459 473		X
Tom Allen	443-5541	WETA	477 459 473	X X	
Joe Youngberg	442-9476	MT Farm Bureau	459 473 477	X X X	
John Semple	443-7487	MT Cattlewomen	459 473	X	
Janet Ellis	443-3949	MT Audubon	459 473		X X
Hal Harper	443-4411	Self	459 473		X
Paul Roos	793 5060	Self	459 473		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 459, HB 473, HB 477

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
AL KINGTON	458-5286	MT. Forest Co. Coalition	459 473 477	X X X	
Tammy Johnson	587-3012	League of Rural Voters	459 473 477	X	
BRUCE VINCENT	293-8821	LEAGUE OF RURAL VOTERS	459 473 477	X	
BETH WHITING	442-8389	MT ASSOC. OF CHURCHES	HB 473 HB 459		X
SHERM JANKE	587 9782	SELF	HB 459 " 473		X Y
Charles BROOKS	698-2380	Hillgs Chamber	HB 473 HB 459	X X	
RONALD E. HARTMAN	220-0458	WILSALL MT.	HB 473 HB 459	X	
JANET HARTMAN	220-0458	Wilsall MT	"	X	
M.S. KAKUK	457-0970	MT CONTRACTORS ASSN	459 473 477	✓	
CRAIG ABERCROMBIE	442-7582	MT Petroleum Assn	459 473 477	✓	
CAYLA BENEFIELD	406 293-5535	Self	473		✓
Jerry Furtney	(406)949-1531	Self	459 473 477	X	
Don SERBA	549-0520	Pulp & Paper Workers	459 473 477	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 459, HB 473, HB 477

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Larry Campbell	821-3110	self	HB459 HB477 HB473		X X X
Doug Soehren	363-6391	PUBLIC	HB459 HB473		X X
Richard Parks	848-7514	self/acc/mac	HB-459 HB-473		X X
Bill LaCroix	363-1329	THIRD GROWTH NATIVE PLANTS	HB 459 HB473		X X
Jim Sweaney	848-7602	self	HB459 HB473		X X
Julia Page	848-7511	NPRC	HB 459 HB 473		X
Jeanne-Marie Souvigney	222-9093	self	HB 473		X
Rick Jordan	494-7646	Self	HB459 HB473	X	
MIKE COLLINS	227-5182	SELF	HB 473 477	X	
PAUL BUCKLEY	533-0465	SELF	HB459 HB473 HB477	X	
DIANE JORDAN	494-7189	SELF	HB459 HB473 HB477	X	
Jim Mockler	442-6223	MT. Coal Council	HB 459 473 477		X
Peggy Trenk	443-4032	MT. Assn. of Realtors	HB459 " 473 " 477	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 459, HB 473, HB 477

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
ANGELA JANACARO	990-1644	MT MINING	459 473	✓	
FRANK JOURDONNAIS	443-2211	ASARCO	459 473 477	✓	
Byron Roberts	442-4479	MT-Building Ind-Assn	459 473 477	✓	
Ed Regan	266-3111	MT Timber	459 473	✓	
Bob Williams	423 5418	self	459 473	✓	
Stephenie Ambrose/Libby	4497724	self	11		X
John Bloomquist	443-2211	Mt. Stockgrowers	459 473 473	X	
Craig Fitzgerald	3-1566	Wood Products Asso.	459 477 473	✓	
Aidan Mythre	4426383	MT. Chamber of Commerce	477, 459 473	✓	
MIKE MURPHY	235-4555	MT. WATER RES. ASSN	HB 459 HB 473	✓ ✓	
Barry Stang	442-6600	Mt. Motor Carriers Assn	HB 459 HB 473 HB 477	✓ ✓ ✓	
Wade Sikorski	775-6878	Self	459 473		X
Monica Lindeen	348-2000	HD 7	473		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 459, HB 473

HB 477

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
PATRICK MCKENNA		MT. COGGING ASSOC.	459 ~~477~~ 473	X X X	
DAVE SKINNER	862 0058	SELF - INATE CITIZEN	ALL	X	
Ronald Bretenier	892-7005	Self F.H. Stoltze Land & Lbr Co	459 473	X X	
Mary Hostwood	259-3156	Self	459 473		X
Steve Kelly	582-0998	Friends of the Wild Swan	459 473		X
Matthew Leow	495-9345	MontPIRG	473		X
P.O. Fem	447-2301	BNSF	~~477~~ 459 477	Y Y	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SEN. TASH resisted the amendment because the Enabling Act already identifies school funding from state land projects.

SEN. TOOLE argued the language allows every school district to challenge a project.

SEN. GROSFIELD proclaimed that **REP. MOOD's** letter addresses that particular issue. He resisted the amendment because he believes in local control.

SEN. MAHLUM called for the question.

{Tape : 5; Side : B}

Substitute Motion/Vote: **Substitute motion failed 4-7 with Cocchiarella, McCarthy, Roush, Toole voting aye.**

Substitute Motion/Vote: **SEN. COCCHIARELLA** made a substitute motion that **AMENDMENT HB045903.AMV EXHIBIT(nas60a20) BE ADOPTED. Substitute motion carried 11-0.**

Substitute Motion/Vote: **SEN. GROSFIELD** made a substitute motion that **HB 459 BE CONCURRED IN AS AMENDED. Substitute motion carried 8-3 with Cocchiarella, McCarthy, Toole voting no.**

EXECUTIVE ACTION ON HB 473

Motion: **SEN. TAYLOR** moved that **HB 473 BE CONCURRED IN.**

Discussion:

Ms. Vandenbosch pointed out to the committee that the bill possessed an incorrect title.

Substitute Motion/Vote: **SEN. GROSFIELD** made a substitute motion that **AMENDMENTS HB047303.AMV EXHIBIT(nas60a21) BE ADOPTED. Substitute motion carried 10-0.**

Substitute Motion: **SEN. TAYLOR** made a substitute motion that **AMENDMENT HB047309.AMV EXHIBIT(nas60a22) BE ADOPTED.**

Discussion:

SEN. TAYLOR stated that he realized MEPA is for juries and lawyers. He offered that the amendment provides direction and rules to the bill, along with a balance.

SEN. TOOLE expressed his concern for lack of cooperation between entities who use MEPA. He argued that the amendment does not provide the necessary road map.

SEN. TAYLOR corrected the language on the first line, added the word "sub" to section.

SEN. GROSFIELD maintained that there will be numerous cases where the department would initiate a project. The amendment involves the department in the process, and allows them to make good decisions.

SEN. MCCARTHY questioned if the project sponsor could be the department as well as the entity that submits the request. **SEN. TAYLOR** told her that was correct.

SEN. TASH spoke in favor of the amendment.

SEN. TOOLE inquired if the amendment would eliminate the back-and-forth involved with MEPA. Numerous committee members replied yes.

Substitute Motion/Vote: Substitute motion carried 10-0.

Substitute Motion: SEN. TOOLE made a substitute motion that **AMENDMENT HB047302.AMV EXHIBIT(nas60a23) BE ADOPTED.**

Discussion:

SEN. TOOLE informed the committee that the amendment would add language to clarify the regulatory requirements. He was concerned that the language did not exist to protect public health and welfare from possible negative impacts from a project.

CHAIRMAN WILLIAM CRISMORE questioned if **SEN. TOOLE** had an example of that type of situation. **SEN. TOOLE** offered the example of a haul route going out of a mine that passes a school.

SEN. TAYLOR opposed the amendment because it was ambiguous. He argued the language would create more time delays.

SEN. GROSFIELD agreed with **SEN. TAYLOR's** comments. He stated that a lot of the mitigation with a mine gets worked out through a different process. He argued that the language already exists.

SEN. TOOLE argued that he would rather see agencies deal with issues of public health and welfare instead of economic feasibility.

CHAIRMAN CRISMORE commented that a haul route is part of the conditions of the timber sale.

Substitute Motion/Vote: Substitute motion failed 1-9 with Toole voting aye.

{Tape : 6; Side : A}

Substitute Motion: SEN. TOOLE made a substitute motion that **AMENDMENT HB047301.AMV EXHIBIT(nas60a24) BE ADOPTED.**

Discussion:

SEN. TOOLE asserted that the amendment was a different concept than the last two. He read aloud the amendment to the committee.

SEN. GROSFIELD objected to the amendment for the same reasons as already stated.

SEN. TASH speculated that the amendment was redundant. **SEN. TOOLE** questioned the objection. **SEN. TASH** declared that the language is part of the permitting process. **SEN. TOOLE** argued that the permitting process was not part of the bill.

SEN. GROSFIELD reported that MEPA is not for conditioning permits, but for gathering information before a decision is made.

SEN. TOOLE confessed that he understood public health and welfare was covered in different areas of the code. Definitions under MEPA do not cover that issue.

CHAIRMAN CRISMORE commented on a TV ad that presumes what will happen if the bill is passed. He charged that it is offensive to say that he is willing to kill more people by supporting these bills. Especially when all of these issues are covered by law. He charged that he would be the first person to kill these bills if there wasn't already a law that covered the issues in question.

SEN. TOOLE expressed his concern that by passing the bills the legislature is weakening environmental protection laws in a weak attempt to create employment.

SEN. MCCARTHY encouraged **SEN. TOOLE** to talk with Greg Petesch about his concerns.

SEN. MAHLUM called for the question

Substitute Motion/Vote: Substitute motion failed 3-8 with Cocchiarella, McCarthy, Toole voting aye.

Substitute Motion: SEN. TOOLE made a substitute motion that **AMENDMENT HB047307.AMV EXHIBIT(nas60a25) BE ADOPTED.**

Discussion:

SEN. TOOLE surmised that the amendment addresses project sponsor. He expressed his concern that policy will be created that steps around the Land Board.

SEN. GROSFIELD argued the amendment dealt with the same issue already addressed.

SEN. TAYLOR called for the question

Substitute Motion/Vote: Substitute motion failed 2-8 with Cocchiarella, Toole voting aye.

Substitute Motion: SEN. COCCHIARELLA made a substitute motion that **AMENDMENTS HB047304.AMV EXHIBIT(nas60a26) BE ADOPTED.**

Discussion:

SEN. COCCHIARELLA explained to the committee that she rewrote the second amendment. The intention is to make the language similar to SB 377. She stated that the word "substantial" would create lawsuits.

SEN. GROSFIELD disagreed with the intent of amendment number two.

Substitute Motion/Vote: SEN. GROSFIELD made a substitute motion to **SEGREGATE AMENDMENT 1 ON HB047304.AMV BE ADOPTED. Substitute motion carried 10-0.**

Substitute Motion: SEN. COCCHIARELLA made a substitute motion that **AMENDMENT 2 ON HB047304.AMV BE ADOPTED.**

Discussion:

SEN. MCCARTHY asked for clarification. **SEN. COCCHIARELLA** declared that it was exactly the same as SB 377. The word substantial creates impossible standards.

SEN. GROSFIELD pointed out that the sections deal with two different issues. He stated that the bill talks about alternatives and imposing conditions.

Substitute Motion/Vote: Substitute motion carried 6-5 with Crismore, Cole, Grosfield, Miller, Tash voting no.

Substitute Motion: SEN. MCCARTHY made a substitute motion that **AMENDMENTS HB047302.ATE EXHIBIT(nas60a27) BE ADOPTED.**

Discussion:

SEN. MCCARTHY explained that state initiated actions needed to be clarified.

SEN. GROSFIELD stated the amendment was good clarification.

SEN. TAYLOR questioned how the amendment coordinate with previously passed amendments.

Ms Vandenbosch informed him it would be a different sub-section. The order does not matter.

SEN. MCCARTHY asked that **Ms Vandenbosch** have the freedom to number the sections.

SEN. MAHLUM called for the question

Substitute Motion/Vote: Substitute motion carried 10-0.

Substitute Motion: SEN. TAYLOR moved that **HB 473 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. TAYLOR commented that the intention of MEPA is good, but the language of the document is not clear. He stated that the bill will bring MEPA back into a balance.

SEN. ROUSH stated his belief in economic development. He expressed his concern that the revision of MEPA would create lawsuits.

SEN. TOOLE declared that he would not support the bill. He expressed his frustration with weakening environmental laws

{Tape : 6; Side : B}

because he does not see how that would result in economic development.

SEN. GROSFIELD stated if there are gaps that show up as a result of the MEPA changes, the Senate can work to fill in those gaps.

CHAIRMAN CRISMORE declared that the EQC should challenge both the environmental and industrial communities. They should point out where changing MEPA has been helpful or harmful.

SEN. TAYLOR stated that business sees Montana as unfriendly. He expressed his hope that voting for these bills would change that impression.

Motion/Vote: Motion carried 7-4 with Cocchiarella, Mahlum, McCarthy, Toole voting no.

The following exhibit was submitted at the end of the meeting

Robert Horne, City-Co. Planning Director, submitted written testimony in opposition to HB 513 **EXHIBIT(nas60a28).**

ADJOURNMENT

Adjournment: 8:20 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT(nas60aad)

SENATE NATURAL RESOURCES
EXHIBIT NO. 21
DATE 3/16/01
BILL NO. HB 473

Amendments to House Bill No. 473
3rd Reading Copy

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:07PM)

1. Title, line 6.
Strike: "TAKEN UNDER"
Insert: "SUBJECT TO"

2. Title, line 7.
Following: "STATUTORY"
Insert: "OR REGULATORY"

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 22
DATE 3/16/01
BILL NO. HB 473

Amendments to House Bill No. 473
3rd Reading Copy

Requested by Senator Mike Taylor

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:16PM)

1. Page 3.
Following: line 28
Insert: "(c) Nothing in this subsection prevents a project sponsor and an agency from mutually developing measures to protect public health or safety, to mitigate impacts to fish or wildlife resources, or to mitigate other impacts to the human environment based on the results of an environmental review. These mitigation measures may, at the request of a project sponsor, be incorporated into a permit or other authority to act."

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 23
DATE 3/16/01
BILL NO. HB473

Amendments to House Bill No. 473
3rd Reading Copy

Requested by Senator Ken Toole

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:06PM)

1. Title, line 7.
Following: "STATUTORY"
Insert: "OR REGULATORY"
Following: "REQUIREMENTS"
Insert: "UNLESS ENDANGERMENT OF PUBLIC HEALTH, SAFETY, OR WELFARE OR A SIGNIFICANT IMPACT ON FISH OR WILDLIFE RESOURCES WOULD OCCUR"

2. Page 3, line 25.
Following: "that"
Strike: "a" through "requirement"
Insert: "any of the following"
Following: "occur"
Insert: ":
(i) a violation of a statutory or regulatory requirement;
(ii) an endangerment of public health, safety, or welfare;
or
(iii) a significant impact on fish or wildlife resources"

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 24
DATE 3/16/01
BILL NO. HB 473

Amendments to House Bill No. 473
3rd Reading Copy

Requested by Senator Ken Toole

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:05PM)

1. Title, line 7.
Following: "STATUTORY"
Insert: "OR REGULATORY"
Following: "REQUIREMENTS"
Insert: "UNLESS ENDANGERMENT OF PUBLIC HEALTH, SAFETY, OR WELFARE WOULD OCCUR"

2. Page 3, line 25.
Following: "that"
Strike: "a" through "requirement"
Insert: "any of the following"
Following: "occur"
Insert: ":
(i) a violation of a statutory or regulatory requirement; or
(ii) an endangerment of public health, safety, or welfare"

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 25
DATE 3/16/01
BILL NO. HB473

Amendments to House Bill No. 473
3rd Reading Copy

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:14PM)

1. Page 4, line 18 through line 21.
Strike: "If" on line 18 through "." on line 21

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 26
DATE 3/16/01
BILL NO. HB473

Amendments to House Bill No. 473
3rd Reading Copy

Requested by Senator Cocchiarella

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
March 16, 2001 (2:09PM)

1. Page 3, line 23.
Strike: "clear showing"
Insert: "written finding"

2. Page 3, line 24 through line 25.
Strike: "would" on line 24 through "that" on line 25
Insert: "may cause"
Strike: "would occur" on line 25

- END -

2. Pg 3 line 25
Strike "substantial"

meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless ~~shorter~~ OTHER time limits are ~~otherwise~~ provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(a) ~~30~~ 60 days to complete a public scoping process, if any;

(b) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) is required; and

(c) 365 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit ~~only~~ one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). AFTER ONE EXTENSION, THE AGENCY MAY NOT EXTEND THE TIME LIMIT UNLESS THE AGENCY AND THE PROJECT SPONSOR MUTUALLY AGREE TO THE EXTENSION.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

~~(7) An agency may not assess fees to a project sponsor for any PORTION OF A review that exceeds the original time period, regardless of whether or not the time period was extended.~~

~~(8)~~(7) (A) ~~If~~ EXCEPT AS PROVIDED IN SUBSECTION ~~(8)~~(B) (7)(B), IF an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a ~~clear showing to the appropriate board, if any;~~ WRITTEN FINDING that there is a ~~substantial~~ likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement. ~~If the agency conducting the environmental review is also the project sponsor and if the agency has not completed the review by the expiration of the original or extended time period, the decision as to whether or not to proceed with the project must be made by the appropriate board, if any.~~

SENATE NATURAL RESOURCES
EXHIBIT NO. 27
DATE 3/16/01
BILL NO. HB 473

Amendments to House Bill No. 473
3rd Reading Copy

Requested by Senator Bea McCarthy

For the Senate Natural Resources Committee

NON-EDITED AMENDMENT!!

Prepared by Todd Everts
March 16, 2001 (5:32PM)

1. Page 3.
Following: line 28
Insert: "(c) This subsection (4), does not apply to agency-initiated actions."

- END -

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3/16/01

NAME	PRESENT	ABSENT	EXCUSED
SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	X		
SEN. DALE MAHLUM, VICE CHAIRMAN	X		
SEN. VICKI COCCHIARELLA	X		
SEN. MACK COLE	X		
SEN. LORENTS GROSFIELD	X		
SEN. BEA MCCARTHY	X		
SEN. KEN MILLER	X		
SEN. GLENN ROUSH	X		
SEN. BILL TASH	X		
SEN. MIKE TAYLOR	X		
SEN. KEN TOOLE	X		

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3/16/01 BILL NO. HB473 NUMBER _____

MOTION: Amendment HB0473d.amv be adopted

	NAME	AYE	NO
1	SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN		X
11	SEN. DALE MAHLUM, VICE CHAIRMAN		X
2	SEN. VICKI COCCHIARELLA	X	
3	SEN. MACK COLE		X
4	SEN. LORENTS GROSFIELD		X
5	SEN. BEA MCCARTHY	X	
6	SEN. KEN MILLER		X
7	SEN. GLENN ROUSH		X
8	SEN. BILL TASH		X
9	SEN. MIKE TAYLOR		X
10	SEN. KEN TOOLE	X	
		3	8

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3/16/01 BILL NO. HB 473 NUMBER _____

MOTION: amendmend HB047304.amv part 2 be adopted

	NAME	AYE	NO
1	SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN		X
11	SEN. DALE MAHLUM, VICE CHAIRMAN	X	
2	SEN. VICKI COCCHIARELLA	X	
3	SEN. MACK COLE		X
4	SEN. LORENTS GROSFIELD		X
5	SEN. BEA MCCARTHY	X	
6	SEN. KEN MILLER		X
7	SEN. GLENN ROUSH	X	
8	SEN. BILL TASH		X
9	SEN. MIKE TAYLOR	X	
10	SEN. KEN TOOLE	X	
		6	5

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3/16/01 BILL NO. HB 473 NUMBER _____

MOTION: be concurred as amended

NAME	AYE	NO
SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	X	
SEN. DALE MAHLUM, VICE CHAIRMAN		X
SEN. VICKI COCCHIARELLA		X
SEN. MACK COLE	X	
SEN. LORENTS GROSFIELD	X	
SEN. BEA MCCARTHY		X
SEN. KEN MILLER	X	
SEN. GLENN ROUSH	X	
SEN. BILL TASH	X	
SEN. MIKE TAYLOR	X	
SEN. KEN TOOLE		X
	7	4

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3/16/01 BILL NO. HB 473 NUMBER _____

MOTION: be concurred as amended

NAME	AYE	NO
SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	X	
SEN. DALE MAHLUM, VICE CHAIRMAN		X
SEN. VICKI COCCHIARELLA		X
SEN. MACK COLE	X	
SEN. LORENTS GROSFIELD	X	
SEN. BEA MCCARTHY		X
SEN. KEN MILLER	X	
SEN. GLENN ROUSH	X	
SEN. BILL TASH	X	
SEN. MIKE TAYLOR	X	
SEN. KEN TOOLE		X
	7	4

SENATE STANDING COMMITTEE REPORT

March 17, 2001

Mr. President:

We, your committee on **Natural Resources** recommend that **House Bill 473** (third reading copy - blue) **be concurred in as amended.**

Signed: _____
Senator William Crismore, Chair

To be carried by Senator Lorents Grosfield

And, that such amendments read:

1. Title, line 6.
Strike: "TAKEN UNDER"
Insert: "SUBJECT TO"

2. Title, line 7.
Following: "STATUTORY"
Insert: "OR REGULATORY"

3. Page 3, line 23.
Strike: "clear showing"
Insert: "written finding"

4. Page 3, line 25.
Strike: "substantial"

5. Page 3.
Following: line 28
Insert: "(c) Nothing in this subsection (4) prevents a project sponsor and an agency from mutually developing measures to protect public health or safety, to mitigate impacts to fish or wildlife resources, or to mitigate other impacts to the human environment based on the results of an environmental review. These mitigation measures may, at the request of a project sponsor, be incorporated into a permit or other

Committee Vote:
Yes 7, No 4.

authority to act.

(d) This subsection (4) does not apply to agency-initiated actions."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
FREE CONFERENCE COMMITTEE ON HB 473

Call to Order: By **Senator William Crismore, Chair,** on April 6, 2001 at 11:02 A.M., in Room 172 Capitol.

ROLL CALL

Members Present: Sen. William Crismore, Chair
Sen. Glenn Roush
Rep. Cindy Younkin, Vice Chair
Rep. Doug Mood
Rep. Gail Gutsche

Members Excused: Sen. Fred Thomas

Members Absent: None.

Staff Present: Larry Mitchell
Jan Brown, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 473, 4/6/2001
Executive Action: HB 473

FREE CONFERENCE COMMITTEE ON HB 473

{Tape : 1; Side : A; Approx. Time Counter : 2}

The meeting was called to order by **Senator William Crismore, Chair** at 11:02 a.m.

Rep. Younkin asked if they had to refer to the pink Senate amendments or if she could propose amendments. **Chairman Crismore** said that since this is a free conference committee, those amendments are provided just for reference. **Rep. Younkin** distributed two sets of suggested amendments, the first set numbered HB047306.alm, dated March 29, 2001, and the second set

numbered HB047309.alm, dated April 6, 2001. She said she would discuss the March 29 amendments first.

{Tape : 1; Side : A; Approx. Time Counter : 3.9}

Rep. Younkin said that her understanding, based on her discussion with lots of people, is that everybody is satisfied with the first amendment. That's the one where on page 3 of the orange bill, line 23, after the word "on" the words "this chapter." are inserted. The rest of subsection (a) through line 25 is deleted. Subsection (a) would then read, "The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on this chapter." The next amendment, number 2 on that one, starts on line 30 of page 3, and after the word "measures" it takes out the middle of that subsection and then adds the word "that", so entire subsection (b) would read "Nothing in this subsection (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act." Amendment number 3 strikes line 4 on page 4.

Rep. Younkin said that some of the departments are concerned that there is some ambiguity, going back to lines 22 and 23 on page 3, as to how this applies to the agency when there is an agency-initiated action or when the agency is the project sponsor. In order to alleviate that concern and make it clear and make it so there is no ambiguity, that's the second amendment that she distributed, dated April 6, 2001. She crossed out amendment number 2, because it conflicted with number 3, and she had never intended for them to do both number 2 and 3. The numbering needs to be changed and she requested that Mr. Mitchell be given the discretion to appropriately number it. Amendment number 3 would be modified a little bit, and would read as follows: "Proposed actions for which the agency is the project sponsor may be modified by the agency only *(insert the word "only")* to comply with a statute or regulation *(instead of statutory or regulatory; and then delete the word "requirement")* based on the information resulting from an environmental review of the action." Her intention with the third amendment dated April 6 is to make it clear to the departments and remove any question of ambiguity as to how it applies to them if there is a state or an agency-initiated action. The problem with amendment number 4 was that nobody knew what an agency-initiated action was; that's not defined anywhere. But we do have project sponsors defined, so if the agency is the project sponsor, then this is how this would apply, and that is amendment number 3 on the April 6 amendments.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 8}

Sen. Roush asked why the word "certain" had to be added to the title. **Rep. Younkin** said that because of subsection (b), starting on line 29 of page 3, that allows the project sponsor and the agency to mutually agree, basically, to condition themselves based on the environmental review. So it really is certain actions, not all actions. That was an amendment called to her attention by Mr. Mitchell that should have been put on when lines 29 on the bottom of page 3 through line 3 on the top of page 4 were added. The title should have been amended by the Senate committee.

{Tape : 1; Side : A; Approx. Time Counter : 9.9}

Rep. Gutsche asked for and the committee granted permission to have **John North**, Department of Environmental Quality, comment on the final proposed amendment. **Rep. Gutsche** said she had discussed the proposed amendment with Mr. North, but now that it had changed, she wanted his interpretation of what it says and whether he thinks it is clear. **Mr. North** said he thinks that the language applies to what has been loosely referred to as agency-initiated actions, one where there's not some kind of a process where somebody applies to the agency and then the agency takes action, for example, in a regulatory context where somebody applies for a permit. It's applying to actions that the agency has authority to undertake without any application. For his agency, DEQ, an example would be an abandoned mine land project. What this then says to him is that the agency could do the abandoned mine land project under its existing authority, but if it does, or when it does, an environmental review under MEPA and there's some impact revealed there, the only way that the agency can do anything about the impact is if it is required to do so by some other statute or rule, for example, the Water Quality Act, or if they have rules that say abandoned mine lands must be reclaimed to certain standards. Those would be the only instances in which they would be able to mitigate the impact.

Rep. Gutsche asked **Mr. North** if it isn't in statute or if there isn't a regulation, if there then is no way to cover the projects. **Mr. North** said that the agency wouldn't have the authority to mitigate that particular impact. **Rep. Gutsche** asked about state timber sales. **Mr. North** said that he hesitated to talk about them, since he hasn't been with the State Land Department since July 1, 1995, but certainly they are agency-initiated actions, because it's DNR that decides what timber sales it's going to put up. DNR does environmental review documents under MEPA, and he thinks that DNR is bound by the stream site management law and would be bound by the Water

Quality Act and that it couldn't perform a timber sale in such a manner to create pollution. He thinks those would probably be the only regulatory requirements that would pertain to the timber sales.

{Tape : 1; Side : A; Approx. Time Counter : 14.6}

Rep. Gutsche said that she particularly finds the last amendment to not be a good amendment based on what Mr. North just said, because now the agency will not have the authority to do any mitigating if there isn't a statute or regulation. So that is why she liked Rep. Younkin's first amendment better, and she actually liked the Senate amendments better because they addressed some of this a little better. She asked if Rep. Younkin had moved the amendments.

{Tape : 1; Side : A; Approx. Time Counter : 15.2}

Motion: **REP YOUNKIN MOVED THE AMENDMENTS. Rep. Gutsche** asked if she was moving them as a group, and **Rep. Younkin** said yes.

Substitute Motion: **REP. GUTSCHE MOVED TO SEGREGATE AMENDMENT NUMBER 3 of amendment number HB047309, dated April 6, 2001.**

Chairman Crismore said this amendment would be segregated, and the committee would discuss the remaining amendments, number 1 from HB047309 dated April 6 and number 1, 2 and 3 from HB047306, dated March 29.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 16.1}

Rep. Gutsche asked about the second amendment on the March 29 amendments, where the language is stricken on protecting public health or safety, mitigating impacts, etc. She liked the language and thought it gave good direction, and had thought it was going to stay in the bill, so she wondered why **Rep. Younkin** was trying to remove it. **Rep. Younkin** said that her intention on the House floor was to say that it was being discussed, not to say that it would or would not be removed. The premise with that is to not prohibit a project sponsor and the agency from mutually agreeing to do something based on the environmental review document. She doesn't care what it is that they do, and she didn't want them to be limited to public health or safety, or fish or wildlife resources, or anything else. Whatever they want to agree upon is fine with her. She thought this was limiting, and if it is taken out and the word "that" is inserted, it's wide open and they can then mutually agree to whatever measures they want to mutually

agree to. She didn't want there to be any limitations on the project sponsor and the agencies' ability to agree to other measures.

Rep. Gutsche said her problem with that is that she thinks public health or safety is fairly broad and gives them good direction, which seemed to be what the folks working on the MEPA bills were wanting to do, to give direction rather than have things be wide open, so to her it doesn't make sense to remove this language. It makes sense to leave it in to have some definition for them, some guidelines for them to know what it is you want them to look at.

{Tape : 1; Side : A; Approx. Time Counter : 18.7}

Sen. Roush said he would concur that the words "to protect public health and safety" should be in there because it's good language to show the people of Montana that there is a concern for public health and safety. That broad term may be in every department, but he thinks that in this bill, which he supported, that the language should probably remain. Regarding the third amendment, from what he heard from Mr. North's comment relating to water quality, whether it be in mining or logging, he knows there is a real concern in the logging industry about the effect of water quality when they have to cross a stream. There is another pending bill that addresses water quality problems. If it would be adopted, he wouldn't be so concerned about this amendment, but if it isn't adopted, he has concerns about this amendment. We all know what the problem is in mining, and that the mining isn't the problem but it's the water quality issue, and it's time that everybody realizes that we have to take care of that problem.

Rep. Mood said he talked with his resource manager about this issue, and in the real world, when the DNR Land Dept. puts out a contract for timber sale prices, there are significant and numerous measures in that contract that are specifically designed to address the concerns of the experts that are employed by the department in order to make that contract reflect what they feel is the best on-the-ground job that they can do. They include a number of things, such as the elk calving grounds. They have wildlife biologists on staff to address those issues, and the contract will address those issues for the individual who is awarded the contract. It is done by mutual agreement. It has nothing to do with whether the MEPA documentation says one thing or another. That's the way the real world works.

Sen. Roush said he isn't so worried about the logging part, but this segregated amendment number 3 addresses mining cleanup too, and that is his concern.

Rep. Gutsche said that she didn't doubt that there are things that are mutually agreed upon between the agency and the contractor, and that's great, but she didn't see any reason not to have it in statute to give some guidelines.

{Tape : 1; Side : A; Approx. Time Counter : 25.1}

Motion/Vote: REP. YOUNKIN moved that AMENDMENTS 1, 2 & 3 of HB047306.alm DATED MARCH 29, 2001, and AMENDMENT 1 of HB047309.alm DATED APRIL 6, 2001, DO PASS. Motion carried, 5-1, with Rep. Gutsche voting no. (Sen. Thomas voted aye by proxy.)

{Tape : 1; Side : A; Approx. Time Counter : 25.6}

Discussion was held on the segregated amendment number 3. **Rep. Younkin** responded to Sen. Roush's previous comments, saying that this amendment would only apply to proposed actions where the agency is the project sponsor. The only time an agency would be the project sponsor involving mines is if it is an abandoned mine, under the abandoned mine statutes within the DEQ's purview. Those statutes, plus the Clean Water Act, and potentially the Water Use Act, would provide all of the parameters necessary for the DEQ to do an appropriate clean up to restore those waters of whatever source it may be, under existing law. She doesn't think there is any gap there. The Clean Water Act is pretty specific about all kinds of things, and if there is to be some use of that water in order to do that, it may be necessary to do it under the Water Use Act as well. She has no concerns with that. With regard to state lands and timber contracts, the State Lands Enabling Act and the organic statutes underneath that guide the State Lands Trust Division within DNRC are very broad. They have very broad discretion and ability to manage all the state lands the way they see fit, so she doesn't see that the agency's hands are necessarily tied, because there's going to be enough discretion under their organic act, in Title 77, for the agency to properly manage the state lands under that act, and they don't have to use MEPA to do that. There's nothing in the law that specifies how to take care of wildlife on state lands, but their statutes are broad enough that they have discretion to appropriately manage them as they see fit.

Chairman Crismore said he's had many timber sale and other contracts with the state, and they're already under guidelines of a set of laws and rules that he's had to completely abide by. The Stream Site Act is a good law and is very restrictive. Industry at this point is the only one in the state that's really affected by that law. He cited several personal experiences with its enforcement. He thinks we are already protected by existing laws.

Rep. Gutsche said she didn't like the amendment to start with, and now it says that the agency only can comply with the statute or regulation. There's lots of stuff that are not in statute or are not regulated, and we know that timber sales and abandoned mines may be among them, and so this really limits what the agency can do. She didn't know what the discussion had been in the Senate, and had thought the Senate amendments that are now being undone were really good.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Discussion was held on the votes in the Senate on the bill and on the amendments and how the Senate members of this committee had voted on them.

{Tape : 1; Side : B; Approx. Time Counter : 4.1}

Motion/Vote: **REP. YOUNKIN MOVED THAT AMENDMENT 3 of HB047309.alm DATED APRIL 6, 2001 DO PASS. Motion carried, 5-1, with Rep. Gutsche voting no. (Sen. Thomas voted aye by proxy.)**

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. WILLIAM CRISMORE, Chairman

JAN BROWN, Secretary

wc/jb

EXHIBIT(frh78hb0473aad)

FREE CONFERENCE COMMITTEE

on House Bill 473
Report No. 1, April 6, 2001

Mr. Speaker and Mr. President:

We, your Free Conference Committee on **House Bill 473**, met April 6, 2001, and considered:

1. Senate Committee on Natural Resources amendments to the third reading copy, dated March 17, 2001; and

2. Senate Committee of the Whole amendment to the second house, second reading copy, dated March 20, 2001.

For the House:

Representative Younkin, Vice-Chair

Representative Mood

Representative Gutsche

Amendment Coordinator

Chief Clerk of the House

For the Senate:

Senator Crismore, Chair

Senator Roush

Senator Thomas

And, recommend that **House Bill 473** (reference copy - salmon) be amended as follows:

1. Title, line 6.
Following: "THAT"
Insert: "CERTAIN"

ADOPT

REJECT

AC HB 473-1

781639FC.hdc

2. Page 3, line 23 through line 25.
Following: "on"
Strike: remainder of line 23 through line 25
Insert: "this chapter."

3. Page 3, line 30 through page 4, line 2.
Following: "MEASURES"
Strike: remainder of line 30 through "MEASURES" on page 4, line 2
Insert: "that"

4. Page 4.
Strike: line 4
Insert: "(c) Proposed actions for which the agency is the project sponsor may be modified by the agency only to comply with a statute or regulation based on the information resulting from an environmental review of the action."

- END -

Amendments to House Bill No. 473
Reference Copy

Requested by Representative Cindy Younkin

For the House Free Conference Committee

Prepared by Larry Mitchell
March 29, 2001 (11:09AM)

1. Page 3, line 23 through line 25.
Following: "on"
Strike: remainder of line 23 through line 25
Insert: "this chapter."

2. Page 3, line 30 through page 4, line 2.
Following: "MEASURES"
Strike: remainder of line 30 through "MEASURES" on page 4, line 2
Insert: "that"

3. Page 4.
Strike: line 4

- END -

Amendments to House Bill No. 473
Reference Copy

For the House Free Conference Committee

Prepared by Larry Mitchell
April 6, 2001 (9:47AM)

passed (1) Title, line 6.
Following: "THAT"
Insert: "CERTAIN"

2. Page 3.
Following: line 28
Insert: "(b) ~~This~~ subsection (4) applies only to an agency ~~action that is undertaken in response to an~~ application or other request to ~~act that is submitted~~ to the agency by a project ~~sponsor~~ pursuant to a legally ~~established application~~ request process."
Renumber: subsequent subsections

NOT CONSIDERED

amended + passed (3) Page 4.
Following: line 3
Insert: "(d) Proposed actions for which the agency is the project sponsor may be modified by the agency only to comply with a ~~statutory or regulatory requirement~~ based on the information resulting from an environmental review of the action."
Renumber: subsequent subsection

statute or regulation

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
FREE CONFERENCE COMMITTEE ON HOUSE BILL 473

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on April 11, 2001 at 5:17 P.M., in Room 172 Capitol.

ROLL CALL

Members Present: Sen. William Crismore, Chair
Sen. Glenn Roush
Rep. Cindy Younkin, Vice Chair
Rep. Douglas Mood
Rep. Gail Gutsche

Members Excused: Sen. Fred Thomas

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jan Brown, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 473, 4/11/2001
Executive Action: HB 473

FREE CONFERENCE COMMITTEE ON HB 473

{Tape : 1; Side : A; Approx. Time Counter : 1.9 - 5}

Chairman William Crismore called the meeting to order. He stated that members had been handed a copy of the April 11 letter from the Governor regarding the amendment to HB 473.
EXHIBIT(frh82hb0473a01)

Rep. Younkin said that the orange copies that Mr. Mitchell had distributed were the amendments that they had put on the bill the other day, and the white copies he distributed were the amendments she wanted to put on the bill. There is a difference in amendment number 2, where it says "parts 1 through 3 of this

chapter" instead of just "this chapter." That was because parts 1 through 3 are cited in the code as being the Montana Environmental Policy Act. There are one or two more parts in Title 75, Chapter 1 that are not actually part of MEPA, so she thought that it was important that they clarify that. Amendment number four also has parts 1 through 3 of this chapter, being MEPA, do not confer authority to an agency that is a project sponsor to modify a proposed project or action. This amendment was suggested by John North, DEQ's chief legal counsel, after some discussions in regard to amendment number 4 on the orange copy that they had put on the bill the other day, and some of the problems that the agencies thought that amendment would create for them. They felt that the revised language in number 4 on the white copy would not create the same kind of problems. The Dept. of Fish, Wildlife and Parks thought that with the language on orange copy number 4, they would be locked into whatever they proposed, and after the environmental review they could not then change. That wasn't the intention. Her intention was that if they have the authority to act to start with, then they also have the authority to modify it. The revised language on white copy number 4 clarifies her intentions and does not put the department in the awkward position that they thought that they would be with the orange number 4 amendment.

{Tape : 1; Side : A; Approx. Time Counter : 5.1 - 6.8}

Motion: **Rep. Younkin moved to remove the orange set of amendments (numbered HB047306.alm) if, in fact, they are considered to be on the bill and to add the white set of amendments (numbered HB047312.alm) to HB 473.**

Rep. Gutsche requested that the motions be segregated. **Chairman Crismore** said that was fine with him.

Motion/Vote: **Rep. Younkin moved to remove the orange set of amendments (numbered HB047306.alm) from HB 473 if they had previously been added to the bill. Motion carried 5-0.**

Motion: **Rep. Younkin moved that white copy amendments to HB 473 (numbered HB047312.alm) be adopted.**

{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 16.5}

Discussion: **Rep. Gutsche** referred to the Governor's letter of April 11, which stated that the affected agencies all agree with this proposed language, and she asked **Rep. Younkin** if she had actually talked with anyone at the agencies. **Rep. Younkin** said she had spoken with John North from DEQ, Bob Lane from FWP, Lyle Manley and Kimbel or Kembel from DOT, and Bud Clinch from DNRC.

Rep. Gutsche said even though this is a simple amendment, she is still trying to figure out exactly what it does. She asked **Mr. Mitchell** if he could expound on amendment 4. **Mr. Mitchell** said in the instances where an agency is the sponsor of a project and there is no outside applicant requesting a response or permit, such as construction of a highway, a timber sale, or the building of a boat ramp or access site for FWP, MEPA cannot be used as an authority. 1 through 3 is MEPA, and that does not confer any authority to the agency to modify the project. The implication is that any modifications need to be done under the existing statutory and regulatory authority that the agency has to build the highway, to construct the boat ramp, or to conduct the timber sale.

Rep. Gutsche asked **Rep. Younkin** if the amendment covers the instances, and many were outlined in letters, where the agency does not have authority to act either by statute or regulation. **Rep. Younkin** said she didn't have copies of the letters with her, but she remembered specifically the example of FWP regarding latrines on fishing access sites. If the department has the authority to build the fishing access site in the first place and has the authority to put a latrine on it, then they have the authority to put that latrine wherever they think that it needs to be. So, if through the environmental review process they have had public comments that it would be better to put the latrine on the west side instead of on the east side, they had authority to do it in the first place so they have authority to put it where they think that it should be, based on the initial reason why they were doing it to start with. If there was some public input that helped them make a better decision, then they can still do that and their modification is not based on the public input through the environmental review alone, it's based on the authority that allowed them to put it there in the first place.

Rep. Gutsche asked what would happen if they had the authority to put the latrine wherever, then they find out there is some problem, such as it's draining or somehow affecting water quality, and they want to move it. Do they have the authority to move it and the authority to mitigate any problems with it after they've already placed it? **Rep. Younkin** said she thinks that they do. In the example given, if it's going to affect water quality, then they could do it not only under their initial authorization to put it there in the first place but also under the Water Quality Act. If it's something else, because they had the authority to build this fishing access site in the first place and put a latrine on it, they have the authority to put that latrine wherever they think that it needs to be, based on whatever information they gathered. They had the authority to do it in the first place, so they have the authority to modify it or

mitigate whatever they think needs to be mitigated. **Rep. Gutsche** asked **Mr. Mitchell** if he concurred with that assessment of the amendment. **Mr. Mitchell** said he thought that what has been said is accurate.

Chairman Crismore asked **Rep. Younkin** if, when she met with the FWP attorney and had probably talked about the letter and the latrine, Mr. Lane had been satisfied with the amendment. **Rep. Younkin** said he was. **Chairman Crismore** said that he feels this amendment clarifies it, and they had gone through the efforts of going back and talking to all of the concerned departments and their attorneys, so he felt comfortable at this point.

Rep. Gutsche asked about a situation described in the FWP letter regarding construction of a boat ramp, where they had received overwhelming public comment and concern that installing a double-wide boat ramp would result in increased motor use and social conflicts on the river. She wondered if this amendment would deal with that situation, if they came back and said that originally they were going to do it one way but later realized that the social conflicts would be unacceptable for whatever reasons. She wondered if this amendment would allow them to do that, which is a little different from actually moving something. **Rep. Younkin** asked her to clarify if she was asking if FWP could decide to put in a single-wide boat ramp or maybe not put in a ramp at all, and **Rep. Gutsche** said yes, after they had already decided to do one, based on public comment or some other input. **Rep. Younkin** said she thought that they could because they had the authority to act to start with. If they have the authority to act, then they have the authority not to act or the authority to change their actions in some way, all under the same act, not under MEPA itself. **Rep. Gutsche** asked **Rep. Younkin** if she thought this amendment would allow them to mitigate concerns under their original action, and **Rep. Younkin** said that is correct.

Sen. Roush read an excerpt from the letter received from the Dept. of Environmental Quality in response to Rep. Gutsche's request, which stated that the agency does not undertake abandoned mine reclamation projects, mainly it performs environmental reviews on abandoned hard rock mine projects, and those projects would be subject to the conference committee amendment. He asked if that amendment is now gone. **Rep. Younkin** said they were referring to the old amendment that this committee has now taken off. **Sen. Roush** said he had wanted to clarify this, and now he is comfortable with it.

{Tape : 1; Side : A; Approx. Time Counter : 16.5 - 17.2}

Motion: Rep. Gutsche moved to segregate amendment number 3.

Discussion: **Rep. Gutsche** said the reason she wanted to do this was for the same reasons she had talked with this conference committee about last time, but she thought the language is really good that the Senate had put in. It really defines public health and human safety, which is really important, and she would like to see that language stay in.

Chairman Crismore agreed to segregate the amendments.

{Tape : 1; Side : A; Approx. Time Counter : 17.2 - 19.6}

Motion/Vote: **Rep. Younkin moved that amendments 1, 2 and 4 (amendments numbered HB047312) to HB 473 do pass. Motion carried 5-0.**

Motion: **Rep. Younkin moved that amendment 3 (amendments numbered HB047312) to HB 473 do pass.**

Discussion: **Rep. Gutsche** said she thought she had made herself pretty clear, and she still thinks that the amendments put on in the Senate with regard to that particular portion of the bill that actually discuss protecting public health or safety, mitigating impacts to fish or wildlife resources, and mitigating other impacts to human environment based on, etc., is really good language and she would strongly urge that that language be kept in rather than adopting the third amendment. She thinks it gives all of these agencies direction. It is her understanding that that's what the folks who were working on these MEPA bills wanted to do, to give more clear direction. **Chairman Crismore** asked **Rep. Younkin** if she wanted to respond. **Rep. Younkin** said she thought about it but thought that the record from the conference committee's last meeting is fairly clear. She said she would state briefly that it is clearer with this amendment that you say nothing in the subsection prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated. She doesn't know that they need to give any direction as to what measures they may agree to mutually develop. Whatever that is, if they want to mutually agree to it, she doesn't have a problem with it, and that's the reason she just didn't want there to be anything that could be misinterpreted such as these are the only things that you can agree to. She thought it was clearer, and that was the reason for the amendment to start with.

{Tape : 1; Side : A; Approx. Time Counter : 19.6 - 20.6}

Motion: **Rep. Younkin moved that amendment 3 (amendments numbered HB047312) to HB 473 do pass. Motion carried 4-1 with Rep. Gutsche voting no.**

ADJOURNMENT

Adjournment: 5:35 P.M.

SEN. WILLIAM CRISMORE, Chairman

Jan Brown, Secretary

WC/JB

EXHIBIT(frh82hb0473aad)

EXHIBIT 1
DATE 4/11/01
HB 473

OFFICE OF THE GOVERNOR

STATE OF MONTANA

JUDY H. MARTZ
GOVERNOR

STATE CAPITOL
PO BOX 200801
HELENA, MONTANA 59620-0801

April 11, 2001

Conference Committee
State Capitol
Helena, MT 59620

Re: House Bill 473

Dear Committee Members,

Late last week, Representative Gail Gutsche requested individual Department interpretation of a proposed amendment to House Bill 473. Due to the time constraints involved with responding to this request, there was no coordination or consultation between Departments or with the Governor's office. Unfortunately, this situation created confusion with the Conferring Committee.

In fact, due to the time constraints, DNRC was unable to respond to Representative Gutsche's request. Their response is covered by issuance of this letter.

Since the individual responses were received, the affected Departments have met collectively with my staff regarding clarifying language to House Bill 473. The result is a proposed amendment supported by the affected agencies and the Governor's office. The new amendment as proposed reads: **"This chapter (parts 1, 2 and 3) does not confer authority on an agency that is a project sponsor to modify a proposed project or action."**

The affected agencies and my office support this amendment. It clarifies any confusion existing in the current language of the bill draft. We regret any misunderstanding this may have caused.

With this amendment, I encourage the Committee to approve House Bill 473.

Sincerely,

JUDY MARTZ
Governor

TELEPHONE: (406) 444-3111 FAX: (406) 444-4151

FREE CONFERENCE COMMITTEE

on House Bill 473
Report No. 2, April 12, 2001

Mr. Speaker and Mr. President:

We, your Free Conference Committee on **House Bill 473,** met April 11, 2001, and considered:

1. Senate Committee on Natural Resources amendments to the third reading copy, dated March 17, 2001; and

2. Senate Committee of the Whole amendment to the second house, second reading copy, dated March 20, 2001.

For the House:

Representative Younkin, Vice-Chair

Representative Mood

Representative Gutsche

Amendment Coordinator

Chief Clerk of the House

For the Senate:

Senator Crismore, Chair

Senator Roush

Senator Thomas

We recommend that **House Bill 473** (reference copy - salmon) be amended as follows:

1. Title, line 6.

ADOPT **AC HB 473-2**

REJECT **830918FC.hdc**

Following: "THAT"
Insert: "CERTAIN"

2. Page 3, line 23 through line 25.
Following: "on"
Strike: remainder of line 23 through line 25
Insert: "parts 1 through 3 of this chapter."

3. Page 3, line 30 through page 4, line 2.
Following: "MEASURES"
Strike: remainder of line 30 through "MEASURES" on page 4, line 2
Insert: "that"

4. Page 4.
Strike: line 4
Insert: "(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action."

- END -

Amendments to House Bill No. 473
Reference Copy

Requested by Representative Cindy Younkin

For the House Free Conference Committee

Prepared by Larry Mitchell
April 11, 2001 (4:41PM)

1. Title, line 6.
Following: "THAT"
Insert: "CERTAIN"

2. Page 3, line 23 through line 25.
Following: "on"
Strike: remainder of line 23 through line 25
Insert: "parts 1 through 3 of this chapter."

3. Page 3, line 30 through page 4, line 2.
Following: "MEASURES"
Strike: remainder of line 30 through "MEASURES" on page 4, line 2
Insert: "that"

4. Page 4.
Strike: line 4
Insert: "(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action."

- END -

Amendments to House Bill No. 473
Reference Copy

Requested by Representative Cindy Younkin

For the House Free Conference Committee

Prepared by Larry Mitchell
April 11, 2001 (4:13PM)

1. Title, line 6.
Following: "THAT"
Insert: "CERTAIN"

2. Page 3, line 23 through line 25.
Following: "on"
Strike: remainder of line 23 through line 25
Insert: "this chapter."

3. Page 3, line 30 through page 4, line 2.
Following: "MEASURES"
Strike: remainder of line 30 through "MEASURES" on page 4, line 2
Insert: "that"

4. Page 4.
Strike: line 4
Insert: "(c) Proposed actions for which the agency is the project sponsor may be modified by the agency only to comply with a statute or regulation based on the information resulting from an environmental review of the action."

- END -